



Jure Maritimo
ET

NAVALI:

ATREATISE

Affaires Maritime.

And of

Commerce.

In Three Books.

The Second Edition.

LONDON,

Printed for John Ballinger in Cliffordy-Time Lane, against the West Door of St. Dioghan's Church; George Diagos in Church; Lore, against Lincolne-Inse Gate: And Rates makes at the Turbe Band in Corolis. 1849.

Ture Manitim NAVALIS ATREATISE Rec. Men. 4, 1903. enithmer animie To bak Commerce

In Three Books.

Lee Second Latinity

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Philips of a substrain Complete Land weight no diver Dear of the Paper of the Paper of the Street St

H E Wildom of God is highly to be admired, who hath not endowed the other living Creatures with that Sovereign Perfection of Wifdome, but hath secured and provided for them by natural Muniments from affault and peril and other necessities: But to Man, he formed him naked and frail, because of furnishing him with Wisdome, Understanding, Memory, and Sense to govern his Actions, endowing him with that pious affection of defiring Society, whereby one is inclined to defend, love, cherish, and afford mutual aid to each other: Nor hath he in no less a wonderful man- rastantini ner (infinitely transcending all humane wisdom lib.9. and understanding) created the material world to be subservient to his Being and Well-being; Yet, without humane Understanding and Reafon did he not build a Ship, raise a Fort, make Bread or Cloth; but these came to pass only by humane Arts and Industry, in which by the Revolutions of the Celeftial Bodies, Times and Seasons, materials and other necessaries are brought forth, by the alteration of which men in their proper seasons reap the fruits of their Labour; so that there is no Society, † Nation, + senecs 4. Country or Kingdom but stands in need of ano- de Beneficia, ther hence it is that men knowing each others cap. 18. necessities, are invited to Traffique and Commerce in the different parts and immensities of this yast World to supply each others necessities, and adorn the conveniencies of humane life.

And as God hath so ordered this wonderful dependence of his Creatures on each other, fo hath

hath he by a Law Immutable provided a Rule for Men in all their actions, obliging each other to the performance of that which is right, not only to fustice, † but likewise to all other Moral Virtues; the which is no more but the dictate of right Reason founded in the Soul of Man, shewing the necessity to be in some act by its convenience and disconvenience in the rational nature in Man, and consequently that it is either forbidden or commanded by the Author of Nature, which is the Eternal Creator of all things : And as God hath imprinted this Universal Law in the minds of all Men, so hath he given Men power (Society being admitted) to establish other Laws which proceed from the will, the which is drawn from the Civil power, that is, from him or them that rule the Commonwealth or Society of Freemen united for their common benefit, (which is called the Laws of Nations) and which by the will of all or many Nations, hath received force to oblige, and is * proved by a Controv. 54-4- continued use and testimony of Authentick Memorials of Learned or Skilful Men.

* Vafauez. 2.

+ Florentius 3 p. tit. 22. fect. 5. Leg. Servus. D. de Serv. export. * Cicero offic. lib. II.ex Pametio.

Now by the Laws of Nature every Man is bound to profit another in what he can, † nor is the same only lawful but commendable; so true was that faying, Nothing is more serviceable to man then man: * But if Man shall neglect this immutable Law in the aiding and affifting his fellow Citizen, and enquire and dispute why God hath laid this necessity upon him; And when Opportunity gives leave to take the benefit of Wind or Tyde, (in order to his furnishing himself or Neighbour with those things that adorn humane life) to dispute the Causes of their flux and reflux, and how they vary and change; he not only offends the Laws of Nature, but af-

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fumes a power of destroying Society, and confequently becomes (at the least) a wilful trans-

greffor of the Laws of Nations.

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And though the Eternal Power hath forestablished this necessity in Mankind, that every man should stand in need of another man, yet to great a Providence is over Industrious men, that searce any man not disabled by Nature or Accident, Sickness, Impotency, and the like, but by his Industry and pains may earn more than would supply his necessities; and so much as any man gets by being truly Industrious above what fupplyes his necessities, is so much beneficial to him, felf and Family, as also an enriching to that Kingdome or State where he resides. From hence it is, that all Mankind (present or to come) are either Traders by themselves or others; and the ends defigned by Trade and Commerce are Strength, Wealth and Imployment for all forts of people, (where the fame doth most flourish)

the end * tending to the advancement, Oppulen - * Coke 2. Infl. cy and greatness of such a Kingdom or State. Constantinople (the Throne once of Christen-Anno 1453.

dome) having been Sack'd by Mahomet the Se-Vide Knowls cond, became a place of defolation as well as that Monare horror, yet he by granting a free Trade and Re-chy. ligion foon after repeopled that great (but unhappy) Spot. Nor did Silemus tread amiss in following the steps of his Victorious Predeceffor, when having the like fuccess on Tauris and Grand Cairo, he translated the Persian and Egyptian Artificers and Traders to that repeopled City, following the Example of the Roman Virtues. Nor did our Victorious third Edward Mirror, cap. 5. deem it an Act unbeseeming his great Wisdom, 11 Ed. 3.

when he brought in the Walloons, whose Indu-cap. 3,

ftry foon established the Woollen Manufacture;

+ V.de Cambden's Q. Elizabeth

he not deigning to give no less a security for the enjoying their then granted Immunities and Priviledges, then his own Royal Person. Nor did that Politick Princess f Thut her Ears from embracing the Offer of those diffressed Burgundians. rafter the Example of her Great and Royal Predecessor) who sought refuge in her Dominions from the rigid feverity of the long Bearded Alva, who planting themselves by her appoint ment at Norwich, Colchefter, Canterbury, and other Towns, have of those places (then only habitations for Beggars) raifed them now in competition with (if not excelling) all, or most of the Cities in England, for Riches, Plenty and Trade. Nor need we run into the History of earlier Times to give an account of the many Kingdoms and States that have rifen by Industry and Commerce; 'tis enough if we cast our Eyes on our Neighbour the Hollander, a place by relation of Ortelius not much bigger then Torksbire, and fuch a Spot, as if God had referved it as a place onely to dig Turf out of, for the accomodate-ing those Countries wherein he heards up the miseries of Winter, it affording Naturally not any one Commodity of use, yet by Commerce and Trade (the Daughters of Industry) it is now become the Store-house of all those Merchandizes that may be collected from the rifing to the fetting of the Sun, and gives those People a name as Large and High as the greatest Monarch this day on Earth: Nor need we pass out of Christendome to find Examples of the like, when Venice. Genoa, Lubeck, Embden, and the rest of the Hanfiatique Towns (once the Marts of the World, till Sloth, Luxury and Ambition got within their Walls, and drove it to Ports of Industry) that have fince kift and embrac'd it, the which this Ifle

Ifle by the Influence of His Royal Majesty hath been no fmall tharer in

Hence it is that Trade and Commerce are now become the onely object and care of all Princes and Porentates, its Dominion not being acquired by the ruful face of War, whose footsteps leave behind them the deep impression of mifery, devastation and poverty, they knowing the return of Commerce is Riches and Plenty of all things conducing to the benefit of humane life, and fortifying their Countrys with

Reputation and Strength. It was Trade that gave occasion to the bring-

ing of those mighty Fleets to Sea, as if God had Anno left it to them to decide by force (wherein no Age or Time can witness the like) the Empire of the World. Hence it was (the advantages being found which arise by Commerce) that Navigation got its birth into the World, reducing the feveral Nations on the Earth by that means to bee en as one common Family; and when in this Isle we were even in the state of Canibals, it brought in a People that instructed us in Arts. Policies and manners, and taught us actions no Canb'en. less virtuous then those themselves followed. And though long and difficult it was before that mighty People could be brought over to Quastus omnie have thoughts of the advantages arising from bus, fays Livy, Commerce and Navigation (they onely propound- Lib. 1 Dec. 3. ing to themselves Bloud, Slaughter, Gonquest, the Riches and Spoyls of Nations :) but when Though they they entred into the Carthaginian War, a quar-had 100 Ro-

(1666

1672 1673.

rel with a People not worth the opposition of a and 75 Gallies, Tribune, (as they thought;) but finding that nei-under Cala ther Tribune nor Pretors, no nor the Flower of Duillus and his Collegue, as

the Roman Army was able to withstand them, or Polybius obto prevent the Invasion of their Country, and serves.

then

then in the very bowels of the same, put it to the Question, Rome or Carthage Mistress of the World, they began to confider whence and from what causes those unknown Affricans should withstand the Conscript Fathers and power of Rome, and should dare to dispute with those that had lead so many Captivated Kings in Triumph, and brought so many Haughty Nations to Truckle under their Victorious Eagles, at last they found it was Commerce and Navigation that gave power and force to that Mighty People; Then it was that Rome began to know that Rome could not be Rome without a Naval force; the which, and to redeem their bleeding Honour they foon haftened and equipt. great as their Competitors: and afterwards Argentum being won, Carthage became no more impregnable; after which with Peace they plowed the Neighbouring Streights to Tinges, Gades, and the Herculean Streights; nor could any thing be too difficult afterwards, till they arrived on the British shore, where beholding her ample Bayes, Harbours, Rivers, Shores and Stations, (the Jewels and Ornaments of that Spot, and having made a Conquest of the same) they soon cultivated into our rude Natures the spirit of Commerce, teaching & instructing us in those polite ways that fortifie a Kingdom by Naval force. as the Standard and undeniable marks of Empire, & by ayding and teaching us in the driving on a continued and peaceable Tract of Commerce, we have fathomed the unknown depth of the Indian Shoars, uniting as it were extreams, made the Poles to kifs each other, teaching us thereby, that it was not the vast Immensities of Earth that Created Empire, but Situation accompanied with Industry, Commerce and Navigation, that would

would enable a People to give Laws to the World: In the pursuit of whose Virtues this Nation hath not been wanting, and of following their great Directions in the enlarging our Fleets; for they, when they advanced their Eagles on the British Shore, found us not then without Ships of Force, time having not been fo envious to this Island, as to eat out those Records wherein mention is made † that the Bri-+ Cambden. tains accompanied the Cymbrians and Gaules in Strabolib. 3. their Memorable Expedition to Greece, long before the Incarnation of the Worlds Saviour; and it was from that Center that the Mighty C.efar first drew his Line, and took thoughts of plowing the Ocean to find out that Warlike People to face his victorious Legions, when, having Landed, and finding a place adorned by Nature beyond any thing that could be called great; taught us to maintain that superiority of Dominion, that no Neighbouring Nation should frequent our peaceable Shores, and those Mer-Gaules Town chants that came, affigned them places to drive the Mart for their Commerce and Traffique, jealous that any those Neigh-Neighbouring Rival should kiss his beloved Bri-bouring Mers tannia but a Roman, and for whom he fetch't fo long and tedious a march: Thus in our Infancy teaching us both Defence and Commerce. And when that mighty Empire began to decline, and those remaining Romans began to moulter and mix among the Natives, and to become as one People again; then Sloth, Luxury and Idleness, (the fore-runners of ruine) invaded our Shores by a fatal stupidity, it suffered our floating Caftles (Bulwarks of the Kingdom) to rot in their pickled Brine, and our Ports to be furveyed by forein people, which supine negligence soon subjected us a prey to our ambitious Neighbors, who

Abrahamus whelochus de priscis Anglorum legibus, written originally by Mr. Lambard.

Inferted in Leges Edvardi, and afterwards confirmed by the Norman Conqueror.

Mr. Selden's Nb. 2. cap. the

Matthew Westm. Anno Selden Mare cap. II.

sheath'd their devouring Swords, but each (as if inspired by the very genius of the place) equipp'd out Fleets great as their Commander, to fecure what they had so dearly wonsof whom Story makes mention of the mighty Arthur, no less famous in his warlike Atchievements, then in leading his Squadrons as far as Iceland, bringing those Northern People to pay obeyfance to his victorious Standard, and acknowledge him as their Supream Lord even from the Britilb to the Russian Tracts; and by him left to the famous Edgar, * who no sooner found his undoubted Right, but refolved to vindicate that Dominion which his Royal Predecessor had with so much glory acquired, and with fo great care had communicated and remitted down to his Successors: No less a number then four hun-Mare Clausum, dred Savl of Ships did that mighty Prince at 10th to the 16, once cover the Neighbouring Ocean, making them the Portcullis of this Isle and the adjacent Seas, by which he vindscated his Dominions on the Waters, and gave Laws in the Chambers of his Empire: Nor did his Successors Canutus, (whom Record makes mention, that having laid that ancient Tribute called Danegelde, for the guarding of the Seas and Sovereignty of them, was emblematically exprest sitting on the shore in his Royal Chair while the Sea was flowing, speaking, Tu men ditionis es, & terra in qua leved rft, ac.) Egbert, Althred, Ethelfred, forget 1035. fo. 409 the affertion of their great Predecessors Domi-Clausum, lib. 2. nion and Sovereignity of the same under no lower a Style then Supream Lords or Gobetnours of the Deean, surrounding the British Shore, never so much as contested by any Nation whatfoever, unless by those that attempted

who no fooner finished their Conquest, and

tempted the Conquest of the entire Empire, in which that became subject to Fate as well as the other of the Land: Nor did the fucceeding Princes also of the Norman Race start or wave that mighty advantage in their fucceffive Claims, and maintaining their Right to the adjacent Sea; as appeared not long after by that Famous Accord made between Edward the First and the French King Philip the Fair , calling * him to an account for Pyracies com- * Coke 4. In 31. mitted within the British Seas; the Submission fo. 142. of the Flemmings in open Parliament in the Second Edwards Reign; and the Honour or Duty of the Flag, which the Politick King, Fohn had above Four hundred years fince challenged by that Memorable Ordinance at Hasting + there decreed to take place univer- + Inter Leges fally, not barely as a Civility, but as a Right, fine anno Regul to be paid cum debita reverentia, and per-Regis Johanfons refusing to be affaulted and taken as "", 2. Enemies; the same not onely to be paid to whole Fleets bearing the Royal Standard, but to those Ships of Privilege that wear the Princes Enfigns or Colours of Service. Nor was this barely a Decree written, but nobly afferted by a Fleet of no less than 500 Sayl in a Voyage Royal of his, wherein he fail'd for Iceland, in his way commanding all Veffels which he met in the Eight circumfluent Seas to pay that Duty and Acknowledgment. Nor was the Third Edward flow in following the steps of his wife Predecessors, when he equipp'd out a Fleet of no less then 700, (though on another occasion) with 200 of which he vanquished a Fleet of twice the number before Calais, to the loss of 30000 French. Nor did our victorious Conqueror of the Sepulchre, the Great Richard

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Richard the second, who in his return from the Holy Land want a Navy Royal to attend him home, by the force of which he took and destroyed near 100 more Ships of the French. And look we but into the mighty Actions of the fucceeding Princes, we shall find all that over defigned Empire but were Zealous in the encouragement of Navigation, looking on that * Cicad Artic Axiom as undeniable, * Qui Mare tenet, eum necese ese rerum potiri, and that without which. the British Soveraignity is but an empty Title.

Nor ought alone the Praises of those great ·Monarchs, whose mighty care had always been to preserve the reputation of their Empire in their Maritime preparations, to be remembred. but also those of our Inhabitants, who always have been as Industrious to follow the encouragement of those Princes under whom they flourish'd, and who with no less Glory and timely application in Traffique, did constantly follow the examples of those of Genoa, Portugal, Spaniards, Castillians and Venetians, whose Fame in matters of Commerce ought to be inrolled in letters of Gold, fince the Ages to come, as well as present, having been doubly obliged to their memory, the third of which making Born in Eng- use of a discontented Native of this Isle, the Famous Columbus, who prompted by that Genius that naturally follows a Native wife man,

discovered a New World, in whose Expedition

he fathemed unknown Paths, and detected the

Antillus, Cuba, and fumaca, &c. and the Terra

Firma of the American Shore, who taking

his Conjectures from the spiring of certain

Winds from the Western Points, by strong im-

land, but refident at Genoa.

1.10, Ep. 7.

pulse accompanied with that Philosophy he attained (a

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tained to, concluded fome Continent must needs be hid in those unknown Parts; his Service being first offered to his Prince and refufed he was foon after entertained, purely on the faith of that Noble Princels Islabella of Spain, Campanella Histor. Histor. Histor. who for 17000 Crowns (for which she engaged her Favels) she received not long af teras many Tuns of Treasure, and to her Husband's own use, in Eight or Nine years time, came above Fifteen hundred Thousand of Silver, and Three hundred and fixty Tuns of Gold. Thus Ingentity encouraged, though in one fingle Person, hath occasioned Wonders, and from a small Kingdom, (as Spain) it hath since raised its head in a condition of bringing all those many Kingdoms and vast Emensities of Earth which they possess under their protection, putting them once on thoughts of no less than an univertal Monarchy, We need only mention Sebastian Chabott, a Native of Bristol, who discovered Florida; and the Shores of Virginia, dedicated to that Virgin Princess Elizabeth: Thorn, Eliott, Owen, Gwyned, Hawkins, Cavendish, Forbisher, Davis, Stadson, Raleigh, and the Incomparable Drake, who was the first (agreed Univerfally) of any Mortal to whom God vouchfafed the stupendious Atchievement of Incompassing not this New World alone, but New and Old together, twice embraced by this Mighty Man, who first making up to Nombre de Dios, got fight (with Tears of Joy) of the Southern Seas, the which in five years after he accomplished it, passing through the Magellan Streights towards the other Indies, and doubling the famous Promontory, he circumnavigated the whole Earth.

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Nor ought that truly worthy Captain Sir Fohn Narborough be precluded from having place after the mighty Drake, he having not long fince passed and repassed the Magellan Streights, by which that Worthy Person hath performed that Atchievment which was never yet done by any Mortal before. To reckon up the particular Actions of Fohn Oxenham(a sharer in that mighty performance of Drake) of his drawing his Veffel up to Land, and covering the same with boughs, passed the unknown paths of Land from Nombre de Dios, to the South Sea, and there building a Pinace enters the Isle of Perles, and from the Spaniards takes a Treasure almost beyond credit; of the indefatigable diligence of Willoughby, Burroughs, Chanceler, Button, Buffin, Forbifber, fames Middleton, Eliz. Reginz Gilbert Cumberland, who ploughed up the North-East and North-West Cathaian and China pasfage; of fanes and Smith; whose Fortune and Courage was great in those Parts; of Poole, who found out the Whale Fishing; of Captain Bennet the first discoverer of Cherry Island; Gillian and of Pett, and Fackman that passed the Vai-

gates, Soythian Ices, and the River of Ob, as far

as Nova Zembla; nor of the Famous Davies, who had penetrated to 86 degrees of latitude,

and almost fet his foot on the Northern Pole:

Men whose Actions in the atchieving of disco-

veries, and pointing out to places for an im-

mense improvement in Navigation and Commerce, ought to he inrolled in the Temple of

Fame as Monuments to fucceeding Ages, of

their Mighty and Laborious Travels and In-

duftry. The confideration of all which gave for

Tempore Angl.

> fome sparks of encouragement to the writing the the

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the ensuing Tract, especially when reflecting that among all Nations there is a Common Law which governs the mighty thing of Navigation and Commerce, I had some impulses more then ordinary to induce me to the same, especially at a time when Navigation and Commerce were never (from the erection by Divine instinct that mighty Prototype the Ark, to this present Age,) in greater esteem then now, and by which we have found vast and great easements and discharges from those Royal and Just Rights and Dues which ever were, and of Old justly due to those that Govern'd this Empire; therefore ought by all ways and means to be fortified and encouraged, be it by whatfoever Art, Science or thing that does in the least point out towards the same. Nor was it then wanting in thoughts to promote and incite the Profeffors of the Law, raising and stirring up their genius to the advancement of the Law in this point: and though I believe many have wish'd that fuch a thing might be, yet none that I can find have ever yet attempted the same: nor is it possible, unless those things which are by Law constituted and known, be rightly separated from those that are natural; for natural Law is immutable and always the fame, therefore may easily be collected into Art. But things that come from Constitution, because they often vary and change, and are diverse in divers places, are put without art, as other precepts of Laws positive or municipal. Hence it was that the Constitutions and Laws of Rhodes for their Justice and Equity got footing amongst the Romans as well as amongst other the borng dering

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dering People on the Mediterranean, Rhodio-Manil.proora-rum usq; rerum memoriam disciplina Navalis Entat. Lege. gloria remansit, yet when they as well as the Romans became subject to fate, they then remained only as Examples of Justice and Reafon for others to imitate and fol-

And Mr Serjeant Calis must be so understood of the ancient Civil and Modern Roman Law reduced into one, and they are not now two Laws, one Civil, and the other Imperial, but only one, that is, the Imperial. Vide his Reading on the Statute of Sewers, sect. 1. so. 31.

The Articles of Inquiry an-

nexed to them in 12 Ed. 3.

The Inquisition at Quinborough, 49 E. 3. Anno 1375. Statutes of Inquiry transla-

ted by Roughton.

low: An obsequious Adorer of which was the great *fustinian*, who caused them to be inserted into the Civil Law; and though they obtained a place amongst others of the Ancient *Romans* as well as the Modern, yet have they not all received by custome a force as may make them Laws, but remain only as the Authority in they of reason.

they have the Authority in shew of reason, which binds not always alike, but varies according to circumstance of time, place, state,

age, and what other conveniences or inconveniences meet with it. Nor have those Laws instituted at Oleron obtained any other or greater force then those of Rhodes or Imperial, considered only from the

reason the which are not become Laws by any particular custome or constitution, but only esteemed and valued by the reasons found in

them and applyed to the case emergent.

'Tis true that in Rome and some other parts of Italy and Germany, and the Kingdom of Portugal, in all those cases wherein the municipal Ordinances of those Countries have failed in providing the Imperial Laws, (if the case be such as that it non Tragua peccado, or be not spiritual) is there made of force, but there is no other Nation, State, or Republick can be named where

where any part of the body of those Imperial Laws hath obtained the just force of a Law, otherwise then as Custom hath particularly induced it; and where no fuch fettled Custom hath made it a Law, there it hath force only according to the strength of reason and circumstance joyned with it, or as it shews the Opinion and Judgement of them that made it, but not at all as if it had any commanding power of obedience, that is, valet pro ratione, non pro inducto jure; pro ratione, quantum Reges Dinasta & Reipublica intra potestatis sua fines valere patiuntur. And for Spain it is observed, Hispani Du-Selden tit. of Honour, lib. plex habent jus, solum Canonicum scilicet et Re-ult cap ult gium; Civile enim (meaning the Imperial Laws) non habet vim Legis sed rationis. And fince this Kingdom as well as most others being free from all subjection to the Empire, having constituted or known Laws of their own, exclude all Imperial power and Law, otherwise then as Custome hath variously made some admission; I applyed my felf to the collection of fuch matters, according to my inconsiderable Judgment, as are either constituted by the Supream Authority of the three Estates, or that which hath in some measure obtained by continued custome the force of Law in reference to matters Maritime and of Commerce, as well in cases publick as private.

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By the first part of which I thought it neceffary, fince Nature by Traffick hath made us all Kinfmen, to confider and examine upon what Grounds and in what manner Commerce was first procured and established, which is by the Laws of Leagues, Embaffies and the like, which is a thing fit to be known; so likewise of what may interrupt the fame, and likewife

of those perpetual Rights that are between those that have any reference to Sea-faring cau-

fes in matters Civil.

In the profecution of this Work I have taken care to refer those things which pertain to the Laws of Nature unto Notions so certain, that no man without offering of violence to himfelf may deny them; and to ascertain the truth of fuch, I have used the Testimonies of such Authority (as in my weak Judgment are of Credit to evince the fame) and as to that Law which we call the Law of Will or Common consent or the Law of Nations, for that which cannot by fure confequence be deduced out of fure principals, and yet appears every where observed, must needs have its rife from free will and confent, which is that which is called the Law of Nations; both which (as much as possible) hath been endeavoured to be kept afunder where the matter hath required, it. And for the Civil Law, I have afcertained the feveral Authorities which I have made use of, that is of the Romans, into three forts, the Pandetts, the Code of Theodosins and fustinian, the Novel constitutions, and these most excellent furifconfults that have by their profoundness of Judgement illustrated the obscure paths of the same Law; the third those most excellent persons who joyned Policy to Law, as Grotius, Raleigh, Selden, and the like. Of other Pieces that of Shardius, entituled Leges Navales Rhodiorum, & selecta Rhodiorum, Petrus Pekius the Zealander, Locinius, Vinius, that of Oleron collected by Garasias alias Ferrand, and Cleriack.

As to those matters that have passed the Pikes at the Common Law, I have as carefully as possible referred to their several Authori-

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ties. In the whole Work I have mo where meddled with the Admirality or its Jurisdiction knowing well that it would have been imper-

tinent and fawcy in me to enter into the debate of Imperium merum, Imperium mixtum, Furisdictio simplex, and the like, and of the bounding out off and not from any right Jurisdictions, which in effect tends to question the Government, and Coke lib. to. fo. 73. in le tripio up the Power that gives Laws Gafe del Marshalfea. and Protection to us fince all that dan should

It is called Imperium, because it proceeds from the authority of the Judge, inherent in the party. Leg. 1. S. de Conft. Princip.

be faid as well on the one fide as the other, hath been so fully and learnedly handled and treated of by feveral worthy persons, (that have indeed faid all that can be faid) but more especially in that Famous Dispute not long since before His Sacred Majesty in Council, where all the most Elaborate and Ingenious Reasons that could be drawn by the Skill of a Learned Civilian, were there afferted in vindicating the Admiralties Jurisdiction by the Judge of the same, Sir Lionel Fenkins, in answer of whom was produced that Great- Good Man the Lord Chief Justice Hale, who as well by Law positive as other his great Reasons, soon put a period to that Question, and layd that asleep which during his days it may modeftly be prefumed will hardly (if ever) be awakened.

He that hath never so little to do with the Compass, though he fits still in the place, does as much or more then all the other necessary noise in the Ship; the comparison is quit of Arrogance, for it holdeth in the defign, it is

not meant of the performance.

And though I well know, That those that fpend their time in brewing of Books are by Seneca [a]

Senera compared to pety Painters, that busic themselves in Copying out Originals, having this half Verse of Horace often thrown in their Teeth;

O imitatores, Servum pecus!

us could be drawn by the lythan, we subjere after a Admic a security of

Yet I have this hope left, That my faults and flaws, like those found in the Cuts of Diamonds, may at this time the easilier escape under the excellency of their Subject, or at least under that of your Charity.

The

The Contents of the First Book,

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causes changing the same by Ships of War	r. I
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CHAP. I.

as Father of the pick have been bearing

Of Dominion and Property in general, and of the Causes changing the same by Ships of War.

I. Of Dominion in the primitive fate of Man.

II. That fuch a Dominion universal might have continued.

III. Of the causes of change of the fame into Dominion peculiar, or Property.

IV. Of things excepted tacitly by the Law of Dominion. 25

V. Of Property, where the same may be thanged against the owner.

VI. Of war, when accounted by the Laws of England.

VII. Of Forraign War, and of things juftly acquired therein ; whether Ships or Merchanding.

VIII. Of Restitution, where the Same by Law may be made of Ships or Merchandize acquired in war.

IX. Of Restitution ex gratia, made by the Sovernign, of him whose Ships are lost, and regain'd afterwards in Battle by Ships of War and of the like by Princes of Republiques in amity.

X. Of the Affaulting an Enemy in the Ports or Havens of a Nation Newter, whether tamful by the Laws of Nations.

XI. Of Protection given to the Ships of the Enemies being in Port be fore, and remaining after war denounc't.

XII. Of the Goods of Friends found in the Ships of Enemies, and of those of Enemies found aboard the Ships of Friends.

XIII. Of the destroying of the Ships of Enemies in general.

XIV. Of interpellation and denunciation, whether neceffary.

XV. Of the Goods of Friends that Supplyeth an Enemy, whether cas pable of being made prize.



O fooner had the Eternal Power Created Man, but He bestowed on him a Right over the things of this inferiour Nature; nor was his Goodness lessened upon the Reparation of the World, after the Flood; (All things being then undivided Justin L. and common to all, as if all had one Patri-

mony) fince every Man might then take to his use what he pleased, and make consumption of what he thought good in his own eyes; which use of the Universal Right common, yet was then instead of Property, for what any one had so ta the place posken, another could not without injury take away from him. feffed by any one, may be

II. Nor was it impossible for that State to have conti- rightly called fined, if Men through great simplicity, or mutual charity had his own

lived

Fustin. lib. 2. Ut de Scythis loquitur Trogus. Primum inter Homines mali nescia, & adbuc aftutie inexperta simpli-

Seneca Naturalium 3. in fine.

citas.

Ne infignare tire limites eamp. fas crat.

lived together, and this is instanc't in those Americans, who through many Ages have lived in that community and custome, and the other of Charity, which the Essens of old practifed, and then the Christians, who were first at Hierafalem, and at this day not a few that lead an afcetick life : the simplicity of our first Parents was demonstrated by their nakedness, there being in them rather an ignorance of Vice, than a knowledge of Virtue, their only business being the Worship of God, living easily on those things which the Earth of her own accord brought forth without labour.

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III. Yet in this simple and innocent way of life, all Men perfifted not, but some apply'd their minds to various Arts; the most ancient of which was Agriculture and Pasture, appearing in the first Brothers, not without some distribution of Estates, and then from the diversity of each Man's actions, arose Emulation, and then slaughter; and at length, when the Good were infected with the Bad, a Gigantick kind of life, that is violent; but the World being walted by the Flood, instead of that herce life, succeeded the defire of Pleasure, whereunto Wine was subservient; and thence arose unlawful Loves, but by that more generous vice Ambition, Concord was chiefly broken, after which Men parted afunder, and feverally poffets'd feveral parts of the Earth; yet afterwards, there remain'd amongst Neighbours a Communion not of Cattle, but of Pastures, because in the small number of Men, so great was the latitude of Land, that without any incommodity it might fuffice to the uses of many, untill the number of Men, quidem aut par- fo of Cattle increased, Lands every where began to be divided, not among Nations as before, but among Pamilies; an instance of which we have hourly before our eyes in those vast immensities that are daily appropriating and a planting in America. From hence we learn what was the cause for which Men departed from the Primitive communion of things, first of movables, and then of immovables alfo; to wit, because when not content to feed upon that which of it felf, and the Earth fingly brought forth, to dwell in Caves, to go naked, or clad with rinds of trees, or skins of Beafts, they had chosen a more exquisite kind of life, there was need of Industry, and using of Art in those matters, which they should give themselves up to. So likewife from hence we learn, that Men not content to live in that

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that innocent state of Community, how things went into Property, not only by the act of the mind (for they could not know the thoughts of one another, what every one would have to be his own, that they might abstain from it, and many might defire the fame thing) but by a certain Mari Liberd Covenant, either express as by division, or tacit as by oc. cap. 15. supation; for fo foon as Communion did not please them. and division was not made, it ought to be supposed an Addendum ilagreement amongst all; that every one should have proper lad Quintilia: to himself what he seized on, + for every one might prefer ni; SI bec cons himself before another, in getting those things useful for the ac- ditio est, ut commodating of Humane Life, Nature not being repugnant to fum hominis the Same.

IV. And though Property may feem to have swallow'd fit habentis. up all that Right which role from the common state of profesto quicthings, yet that is not fo; for in the Law of Dominion, extream necessity feems excepted. Hence it is, that in Navigation, if at any time Victuals fail, what every one hath, grobins Satural ought to be brought forth for the common use : and so in lib. 2. c. 12. a Fire, I may pull down or blow up my Neighbours Houfe, to fave mine; destroy the Suburbs, to raise Lines or Forts, to preserve the City thereby; dig in any Mans Grounds for Salt-Peter, cut in pieces the Tackling or Nets upon which Quo non fragmi my Ship is driven, if it cannot be dif-intangled by other 5. Quod ait. means, all which are not introduced neither by the Civil D. incend. Leg. Law, nor the Municipal Laws of Countreys, but are expounded by them, with their proper diversities.

12 Ed. 3. tits diffreff. 170. 11 H. 7. 5: Reniger & Fogaltas, Plowden, c. 1. to the 10 Coke 3. Inft. fol. 83.

V. Nor is Property fo far instated in Man, but the same may again be divested by such means as stand with the Law rerum diversoof Nature and Nations; and first by War, the causes of which rum, seems to are affigned to be three, Defence, Recovery and Revence.

Bald.lib. 3. di have been of opinion, that

by the Laws of Nations one may take Armes to abate the growing power of his Neight bours. Sed ut vim pati poffe ad vim inferendam jus tribuat, ab omni equitatis ratione abborret: But that a possibility of suffering force, should give a right of offering of force, this is far from all equity, fays the excellent Grotins; lib. 2. cap. 1. fect. 27. Sir walter Raleigh in Hift. of the World, cap. of Duels, fol. 950:

But then fuch War must be just, and he that undertakes it must be a Soveraign; the just causes to make a War are our Princes, or Countreys defence, and that of our Allies, the fatisfaction of our injuries, or theirs; our just preten-

t cic. Offic. 2. anicanid in # ceffit, proprium quid jure poff= detur, injuria aufertur. Ma-

Leg. 2. 6. cum in eadem D. ad. Leg. Rhodani. Quemadmodum S. Item. D. ad t. Agutlam.

tions to an Estate or Right; Divines have added another. not only the defence of Religion, but its advancement and propagation, by the way of Arms, and fome the extirpation and rooting up a contrary. Certainly War is too rough a hand, too bad a means, to plant Piety; Sient non Martyrem pæna, sic nec fortem pugna, sed causa; As it is not the punishment that makes the Martyr, fo it is not fighting that declares a valiant Man, but fighting in a Just Cause; in which who fo shall resolvedly end his Life valiantly, in respect of the Cause, that is, in the defence of his Prince, Religion or Country, ought to be numbred amongst the Mar-

tyrs of God. VI. War by the Laws of England, is accounted when the

Courts of Justice are shut up, and the Judges and Ministers of the same cannot by Law protect Men from violence, nor distribute Instice. So when by Invasion, Insurrection, Rebellions, or fuch like, the current of Justice is stopt and shut 14 E. 3. tit. up; Et Rent Leges inter arma; then it is faid to be time of War, and the Tryal of this is by Records and Judges of the Courts of Justice, and not by a Jury: the Kings Standard appearing in the Field, or at Sea, does likewife denote a War, and if the Rebells against whom the Kings Host marches, breaks a Prison, the Goaler is not lyable, for they are not fuch Rebels as are capable of being supprest by the ordinary Ministers of Justice; but the subject matter is now only touching Forraign War, or that which is commenced

in our peaceable possession, according to Justice.

VII. By the Law of Nature in fuch a War, those things are acquired to us, which are either equal to that, which being due unto us, we cannot otherwise obtain, or elfe is fuch a mark as does infer damage to the guilty part, by a fit measure of punishment. And by the Laws of Na. tions not only he that wageth War on a Just Cause, but every one in Solemn War, and without end and measure is master of all he taketh from the Enemy in that sense, that by all Nations, both himself and they that have Title from him, are to be maintained in the possession of such things; which as to external effect we may call Dominion:

for Dominion or Right, or for the maintaining of the same

X norb. 5. de Cyrus in Xenophon, It is an everlafting Law among Men, that Inflit. Cyri. the Enemies City being taken, their Goods and Money should be the Conquerour's; for the Law in that matter is as a common

agreement,

Seire facias 122.inter Mortimer and Th. Earl of Lancafter.

agreement, whereby the things taken in War become the Ariflotle 1. Takers: from the Enemy are judged to be taken away, Polit. those things also which are taken away from the Subjects of the Enemy, and Goods fo taken cannot by the Law of Nations be properly faid taken, but when the same are out of all probable hopes of recovery, that is, as Pomponius observes, brought within the bounds or guards of the Enemy; for, fays Hujusmodi he, such is a Person taken in War, whom the Enemies have res non tam taken out of our, and brought within their guards, for till then capta quam rehe remains a Citizen: And as the Law of Nations is the cepta intelligifame reason of a Man, so likewise of a thing; and there- Pomponius & fore Goods and Merchandize are properly faid to be the L. Leg. in Bello Captors, when they are carried infra Prasidia of that Prince Parag. Si quis or State, by whose Subject the same were taken, or into the servum in pr. de Fleet, or into a Haven, or some other place where the Navy of Capt. & post. the Enemy rides: for then it is that the recovery feems to be past all hope.

And with these Laws agrees the Common Law of this 2 R. 3. f. 2. Realm, which calls fuch a taking a Legalis Captio in Fire Belli, and therefore in 7 R. 2 an Action of Trespass was pass statham brought for a Ship, and certain Merchandize taken away, the Defendant pleaded that he did take them in le beut Were ou les Pormans queur font Enemies le Kop : and

it was adjudged, that the fame Plea was good.

In the year 1610, a Merchant had a Ship and Merchandize taken by a Spaniard, being an Enemy; a month after B. R. Browna Merchant Man, with a Ship called The Little Richard, low 2 part. in retakes her from the Spaniard: it was adjudged, that fuch a possession of the Enemy, divested the Owner of his interest, and the retaking afterwards in Battel, gained the

Captors a property.

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Tis true, the Civilians do hold, that it is not every poffellion that qualifies such a Caption, and makes it become the Captors; but a firm possession (that is) when the prize doth pernoctare with the Enemy, or remain in his possession, by the space of 24 hours; but as this is a new * Law, so it is conceiv'd to be against the ancient as well as the modern Maris c. 283, practice of the Common Law: for the Party in the ancient 287. conflit. Presidents doth not mention by their Plea, that the prize Gallice lib. 20. did pernoctare with the Enemy, and but general, that the tit. 13. av 24. fame was gain'd by battle of the Enemy.

But, if fuch a Recaption is by one of the King of En Pl. 54.

tur, per D. per

7 R. 2. Tref-

* Consulatu pass Statham

clands

lands Ships of War, their Restitution has been made, the Party relieved paying his offering to the Admiral, com-

monly called Salvage Money.

VIII. This right of changing of Dominion or Property, by force of Arms, is fo odious, that in the taking of Goods, if by any possibility, the right owners may have restitution, the same hath been done: And although a larger time than twenty four hours happens, between the capture and recapture, and so may pernoctare with the Captor, yet restitution may be made, and therefore if one Enemy takes the Ship and Merchandize of another Enemy, and brings her into the Ports or Havens of a Neuter Nation, the Owners may seize her, and the Admiral of that Neuter Nation, may in some cases restore the Ship and Goods to their Owners, and the Persons Captive to their former liberty: the reason is, for that the same ought to have been brought tium jure. Gro- infra Prasidia ? of that Prince or State, by whose Subject she was taken.

A Dunkirker having seiz'd a Frenchmans Vessel, Super al-1. 3. 6. 9. A Lind Mare, fold the fame with her lading at Weymouth; whi-3. in B.R. Mar- ther it had been driven before the was brought infra Prasid. Dom. Reg. Hispania: the Frenchman coming into Port, then claims the benefit of the Laws of Nations, the King of England being then in Amity with both their Princes, and that Restitution be made; in which Case it was resolved fied in the Ca- by all the Judges, b That if there be a Caption by Letters ptor, upon the of Marque, or by Piracy, and the Vellel and Goods are not brought infra Prasidia of that Prince or State, by whose Subject the same was taken, the same will not divest the answer the ori- Property out of the Owner; with this agrees the Law Ciginal debt or vil. c and restitution may be made.

cannot be done without a Judicial adjudication, the opportunity of which he hath loft by bringing the prize into the Countrey of another Prince : for as to private War, their Countries are as an Afylum, per Leg. Libertas, & de Leg. Jur.

> IX. But if the Ships of War of Nations in Enmity meet at Sca, and there be a Caption, if there be that which is called a firm possession, the Neuter Nation cannot re-deliver or make relitution of the thing fo acquired : and fo it was adjudged, where Samuel Pellagy with a Ship of War of the Emperour of Morocco, took a Spanish Ship, and brought the fame into England, that he could no ways be question'd for

? Res que intra presidia perdu-Elæ nondum funt, quanquam ab hostibus occupata, Domiвит поп тиtarunt ex Gentius de jure Belli ac Pacis,

fhe's Reports. For this is

not an absolute Property immediately vetaking; but a. conditional Property to damage, which

Bulfrod 3. part. f. 28. cited in Marib's Cafe.

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for the fame criminaliter, or restitution to be made civili. The getting ter; for that the King of Spain and the Morocco Emperour of Letters of were Enemies, and the King of England in Amity with Reprizal aboth, and that fuch a caption is not called Spoliatio, fed Le gainft a Natigalis captio, in which there can be no restitution made up make a War on neither of the Stat. of 3 1 H. 6. cap. 4. or 27 Ed. 3. cap. between both 13. for he that will fue to have Restitution in England for States; nor care Goods taken at Sea, must prove that the Soveraign of the they be faid to Party was in Amity with the King of England. Second 22 E. 3- f. 23-d ly, that he that took the Goods, his Prince was at the time of the taking in Amity with the Soveraign of him whose Goods were taken; for if he, which took them, was in Enmity with the Soveraign of him whose Goods were taken, then the fame will not amount unto a depredation or robbery, but a lawful taking, as every Enemy might 2 R. 3. f. 2. take of another.

es boniegay

in Camera Scaccarii, brought a Bill against divers English. 13 E. 4. 9. Men, wherein fetting forth, quod depradatus & spoliatus 22 E. 3. f. 23. fuit, upon the Sea, juxta partes Britannia per quendam Virum Bellicosum de Britannia, de quadam Navi, and of divers Merchandises therein, which were brought into England, and came into the hands of divers English-men, naming them, and fo pray'd Process against them, who came in, and pleaded, that in regard this depredation was done by a Stranger, and not by the Subjects of the King of England, 27 E. 3. c. 13 they ought not to answer: It was there resolv'd, Quod 31 H. 6. c. 4. quisquis extraneus, who brings his Bill upon this Statute to which gives have Restitution, debet probare quod tempore captionis fuit de the Chancel-

A Spanish Merchant, before the King and his Council, 7 E. 4. 14.

alterum. But, if the King of England is in Enmity with the non tam capta, States of Holland, and one of their Ships of War takes a quamreceptain-Merchant-Man of the King of Englands, and afterwards telligitur : per another Ship of War of England meets the Dutch-Man and D. Leg. Pompohis prize, and in aperto pralio, regaines the prize, there in Bello Par. fi restitution is commonly made, the Owners paying their quis servum in Salvage : fo where the prize is recover'd by a Friend in pride capat poft.

cus, & sic ceperit bona, tunc non fuit spoliatio, nec depredatio, sed legalis captio, prout quilibet inimicus capit super unum &

amicitia Domini Begis, and also, quodipse qui eum receperit, lour, and one & spoliavit, fuit etiam sub obedientia Regis, vet de amicitia Judge, and by Domini Regis, sive Principis quarentis, quia si fuerit inimi-

Hujusmodi res

Poftliminio. de Capt. & pofili. and clarton. Hill. 26. 0 27

Car. 2. in B. R. Restitution made formerly by a Frenchregained an English prize out of the hands of a Dutch-Man of War.

Per Lie poll- amiry or comes into his Ports, restitution is likewise made: liminium, Par. but when fuch Goods become a lawful and just prize to the Captor, then should the Admiral have a tenth part, follows Boja, and cole, ing the religious example of Abraham, after his Victory over the five Kings.

X. He that is an Enemy, may every where be affault? ed, according to the Laws of Nations; Enemies may therefore be attaqu'd or flain on our own ground, on our Enemies, or on the Sea; but to affault, kill, or spoil him in Man, who had a Haven or Peaceable Port, is not lawful; but that proceeds not from their Persons, but from his Right that hath Empire there, for Civil Societies have provided that no force be used in their Countries against Men, but that of Law, and where that is open, the right of hurting ceafeth: the Carthaginian Fleet was at Anchor in Syphax Port, who at that time was at peace with the Romans and Carthaginians; Scipio unawares fell into the fame Haven, the Carthaginian Fleet being the stronger, might easily have deftroy'd the Romans; but yet they durit not fight them; the like did the Venetian, who hindred the Greeks from affaulting the Turkish Fleet, who rid at Anchor in a Haven, then under the Government of that Republique; fo when the Venetian and Turkish Fleet met at Tunis, though that very Port acknowledges the Ottoman Emperour, yet in regard they are in the nature of a Free Port to themselves. and those that come there, they would provide for the Peace of the same, and interdicted any hostile attempt to be there made.

Anno 1665, 1666. Bell. Angl. cum Batau.

But they of Hamborough were not so kind to the English, when the Dutch Fleet fell into their Road, where rid at the same time some English Merchants Man; whom they asfaulted, took, burnt and spoil'd, for which action, and not preserving the Peace of their Port, they were by the Law of Nations adjudg'd to answer the dammage; and I think have pay'd most, or all of it fince. But Enemies in This is Just their own Ports, may be assaulted, burnt or destroy'd, by Billi, & in Re- the Law of Arms.

publica maximè conservanda Reg. f. 129. Arreft. fact. Super

Allenig.

XI. If the Ships of any Nation happen to arrive in any Just Jura Billi, of the King of Englands Ports, and afterwards and before their departure, a War breaks out, they may be secured, priviledged without harm of Body or Goods; but under Sonis Mercator. this limitation, till it be known to the King, how that

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Prince or Republique of those, whose Subjects the Parties Some of old are, have weed and treated these of our Nation in their have held the Ports. But if any should be so bold, as to visit our Ports after a War is begun, they are to be dealt with as Ene- tor tempore belmies.

XII. By the Laws of Nations, generally all things are lat commutet, the Captors, which he takes from his Enemy, or which pace frauntin, his Enemies gain'd from another by force of Arms; fo likewife all those Goods, that he shall find in his Enemies cuflody: But then it must be apparently manifest, and evidently prov'd, that it is really the Enemies; for if an English man should have Goods in the custody of a Dutch Factor at Cales, and a War should break out between that Prince and that Republique, yet are not the Goods of the Englishman subject to the seizure of the Spaniard, it being apparent, the Owner is not a Subject of their Enemies : So conful. Mayis. likewise if the Goods of Friends are found in the Ships of c. 273. Enemies, this does not ip/o facto, subject the same to be prize by the Laws of Nations; thought it be a violent prefumption, and may justly bear a legal examination, till which there may be a fecuring of the prize, till adjudication shall pass. So on the other hand, if the Ships of Friends & qui intra shall be fraighted out to carry the Goods of Enemies, this prasidia ejus may subject them to be prize, especially if the Goods shall funt: Let him be our Enemy, be laden aboard by the consent or privity of the Master or and they that Skipper; though in France they have subjected and invol- are within his ved the innocent with the nocent, and making both of Guards. them prize : In the late Flemish Wars with England, the Liv. 1.37, & Oftenders became obsequious serviceable with their Ships to the Traffick and Commerce of both Nations: memorable was the action, when the War was between the two Re- Romani nos bo-

Clericus, Agricola & Merca li utroque col-

alibi paffim.

Gregov. lib. 9. nestissimas eas

atque justissimas credimus possessiones quas Belli Lege captas habemus; neque verò induci possimus ut flulta facilitate deleamus virtutis monumenta, si eas illis reddamus, quibus semel perierunt : imo verò tales possessiones, non tantum cum his qui non vivunt civibus nostris communicandas; sed & posteris relinquendas censemus: Tantum abest ut parturelinquendo in nos splos ea constituamus, que in Hostes constitui solent : Titus Largus his opinion in the Senate of Restitution: We Romans believe those possessions to be most honourable and just, which we have taken by the Law of War; nor can we be induc'd by a foolish facility to part with the Monuments of our Valour, and reftore them to those that were not able to keep them; nor do we judge fuch possessions to be communicated only to our Country-men now living, but to be left to our Posterity: so far are we from relinquishing what we have got, and dealing with our felves, as if we were our own Enemies. De Veil idem in Romulo narrat Plutarchus.

publiques

publiques, Venice and Genoa, the Grecian Ships being then imploy'd, (as those of Oftend) were fearch'd, and the Enemies pull'd out, but no other matter done; however, it is most certain, let the Commission, or Protestion of such Ships be what they will, if Men will venture to trade under fuch a cloak, it behoves them, that the Skipper and his Crew be entirely ignorant; for it is his Action that will go far in the freeing, or making absolute the prize, and Goods fo made prize, the property is immediately gone and changed by the Owner be who he will, he never can claim the fame; for the Laws of Nations made the Enemies first man fters by external Dominion, and then by Conquest, gave the property to the Capter : following that Judgement of the Romans, what soever they got of their Enemies by Valour, they would transmit to their Posterity by Right.

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XIII. 'Tis not against Nature, to spoil the Goods of him, whom it is lawful to kill; and by the Laws of Nations, it is permitted that the Goods of the Enemies may be as well spoiled as taken; and Polybius observes, that all things of the Enemies may be spoiled, their Ships, Goods,

Forts, Oc.

XIV. And though it may happen fometimes, that a War may break out, and there may be no publick denouncing or proclaiming the same; that if a Friend, or Neuter should assist an Enemy with Contraband Goods, that is Armes, &c. whether upon fuch a caption, the Goods may be made prize; the resolution of which will depend on

3 Eliz. in C. B. Owens Reports, fo.45. but q. of these Considerations. that Cafe.

First, by Natural Law, where either force offer'd, is repelled, Grotius lib.3. or punishment exacted, of one that hath offended, there needs no denunciation, for Princes are not to stand debating with words or arguments, being injured beyond words: For War undertaken to resist violence, is proclaim'd not by an Herauld, but by Nature: for it is no more than the invading of one for another, or taking of the Goods of the debtor, to answer the Creditor damage.

> Secondly, Interpellation is introduced by the Laws of Nations, whereby Princes or Republiques, having received injuries, may apparently shew that they had no other way to recover their own, or that which is due to them: for fuch Interpellation following after injuries committed, constitutes that Prince or State in a fault that fall not render fatis-Thirdly, faction.

Bist. Si

CA7. 3.

Thirdly, admitting that Interpellation hath gone, and fatisfaction hath been required for the dammage, and no fatisfactory return hath been made, whether then the Ships or Territories of the Enemy may be affaulted : and for that it has been conceiv'd they may, for denunciation is no more but to fignifie that the Parties, against whom the fame is commenc't, are unjust, and will not do right, and therefore War is begun by the Supream Power: now Princes or Republiques, having done that which by the Law of Nature they were not oblig'd to do, that is after a wrong done, abstain'd from War by Friendly demanding of fatisfaction or reparation, (which is requir'd only by the Laws of Nations) and publique Justice being deny'd them, there remains no other or further obligation on the State, the fame amounting, and indeed is an apparent defiance; and Proclamation is no other.

So that if Indiction is not necessary, the caption of such Ships may subject them to be prize, (perhaps the Leagues of the feyeral Countries, may have provided for cases of the

like nature.)

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XV. And although the Goods of Friends, according to the circumstance of the Case, may be preserv'd by adjudication, and restor'd to their owner; yet all manner of Goods have not that priviledge, for though the Freedom of Trade preserves the Goods of Friends against the rigour of War, 1. December at yet it does not those Goods that supplie the Enemy for War, London, 1674. as Money, Vietuals, Ships, Armes and other things belonging Art the third, therete, for to supply an Enemy that invades our right, or by Goods Confeeks the destruction of our Countries, is a liberality not traband, or to be allow'd of, and it certainly stands with necessity, that Prohibited if I cannot safely defend my self, or endamage my Enemy Merchandize without intercepting the things fent, it may justly be done: but when fuch Goods are feized, whether they give the Captor a Right of Property, or a Right by Retention, to compel that neuter Nation to give Caution for the future, by Hostages or Pledges, not to supply the Enemy, may be a question. The Romans, who had brought Victuals to the Enemies of Carthage, were taken by the Carthaginians, and again rendred upon request; the Hollanders in the heat of the War between Sweden and Poland, never fuffer'd themselves to be interdicted with either Nation; the fame de anno 1589, State when they had War with Spain, they intercepted 1595.

Vide Treaty what is meant

the French Ships, passing to or for Spain, but restor'd them.

Platarch.

And Pompey, in the History of the Mitridatic War, fet a Guard on the Bofthorns, to observe if any Merchant sailed in thither; who foever did, and was taken, was furely put to death; fo Demetrius when he possessed Attica with his Army, having blockt up Athens, hang'd up both the Master and Commander of a Ship, who attempted to bring in Marfins in his Corn: the Hollanders having blockt up Dunkirk, some English Merchants Ships did attempt to enter, but were

Danifh Hift. L part. 2.

deny'd by the Hollanders.

31 Eliz. C. B. Owen 45. Vide the Pro- gainst their will, so must they not against the will of each Party clamation of Holland to England, &cc.

Itomes.

Bald. ad l. 2. e. de Sev. n. 70. Under the name of Contraband may be comprehended Arms only, as pieces of Ordinances, with all Implements belonging to them, Fire-Balls, Powder,

Marches, Bullets, Pikes, Swords, Lances, Spears, Holberts, Guns, Mortar-pieces, Petards, Granadoes, Musket-refts, Eandaliers, Salt peter, Muskets, Musket-shot, Helmets, Corflets, Breaft-plates, Coats of Mail, and the like kind of Armature; fo for Horses, and other Warlike Instruments, (Vid. Marine Treaty between England and Hotland, 1. Decemb. 1674. Art. 2.)

Most certain, if a Neuter Nation hath had notice of the War, and caution given them (as is ufual) not to supply the Enemy with Counterband Goods, as they call them; if fuch be the case, the prize is become absolute the Captors: So Queen Elizabeth did, when the feized on the fixty Sail Vide Tit. Cu- of the Hansiatique Towns, who were carrying of Goods, ropas Contrabanda, to the Spaniards her Enemy; she condemned them, and made them absolute prize; for as neuters are not compellable by the rigour of War, to give any thing a-

> afford such things, as may dammage one another; for Persons or Nations having had notice of the War, which is done, and caution given sometimes by Proclamation, or some other publick Edict, fignifying the right of their Cause; shall afterwards gather to, and affift the Enemy, whether Affociates, Neuters, or Subjects, the same yields a right, so far as to them, not only to the charge and dammage that may fall thereby, by making them prize; but may make them obnoxious to punishment; For it is the duty of those that a's stain from War to do nothing for the strengthning of him, who maintains a bad Cause, whereby the motions of him that wageth a Just War may be retarded; and where the cause is doubtful, they ought to flew themselves equal to both, permit-

> ting Passage, Baking, Dresling, and affording Provision for

each Army, or Navy.

L. cami-

L. Amiliu Prator, accused the Tejans for victualling the Enemy's Navy, promising them Wine, adding, that is Ships, Masts, unless they would do the like for the Navy of the Romans, and whatsohe would account them as Enemies: but common expethought or afrience hath taught Nations and Kingdoms, when they de- certain'd capaclare a Neutrality, to make provision by way of League ble of Arming with both the Nations at War, that when it should hap an Enemy. pen the Armies of both, or any draw towards their Territories, it might be lawful for them to exhibit the Common de Judeis Co-

offices of humanity to both.

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The Venetians having so far prevail'd against the Turks in the Island of Candia, that they held the City of Canea, straightly besieg'd by Sea and Land, whereby they had reduc'd it to great extremities, it happened at that time to ride about feven frout Merchant Men, in the Port at Smirna; the General of the Venetians being jealous of their joyning with the Turkish Armado, defired to know their minds, who answer'd, they would prove Neuter in the difpute; but afterwards (though at first the Captains all refufed) upon the threatning of the Grand-Seignior, to lay an Embargoe on all the Goods of the English Nation in his Do- Anno 1650, or minion, and to make flaves of their Perfons; those Cap. 1651. vide R. tains were forced to joyn with the Turkell Forces, who cooke of the beat the Venetians from before Canea, and fo reliev'd it; in equal danthe Venetians Embassadour complain'd to the then Powers ger with the in England, but could have no relief, being answer'd, that Trade. those Ships in the Turks power, were Subject to it.

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Of Letters of Barque, and Reprisal.

I. Of Reprizals generally considered, XIV. Domicil not origination subs and for what.

II. That Reprizals are unlawfull by the Laws of Nature, and the Ro-

III. That the same by the Laws of Nations, are now become lawful.

IV. The advantage that accrues by the Same.

V. The Causes that require the fame.

VI. Of the things necessarily requifite for the observing them.

VII. Reprizals ordinary and extraordinary, according to the Laws of England.

VIII. Of the Interest of Princes of granting them, and Letters of Requeft.

IX. The difference of injustice offer'd to Subjects and Forraigners; when and where the one is concluded, and not the other.

K. What is meant by denying of Right, and doing of injustice, and where Reprizals take rooting, and where not.

XI. Of Reprizals awarded in cases ordinary.

XII. Of Reprizals issuing forth in - cafes extraordinary.

XIII. Of Letters of Request precedent, allotting a time certain for satisfaction.

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XV. Reprizal not granted if the spoil mas occasioned by war.

XVI. Of Persons exempt from Repris gal by the Laws of Nations; Canon and Civil Law.

XVII. where Ships or Goods are Subject to Reprize, and where

XVIII. When Right deny'd, when ther Life is engag'd, and whether Persons refusing to yield may be Clain.

XIX. Goods taken by Reprize, where the Property is altered, and where

atberwife. XX. Where many Ships are prefent.

and one becomes Captor, whether the spoil must be divided or remain bis, that became Mafter.

XXI. Of the Captors duties after a Prize taken , and its exemption from Cuftom.

XXII. Restitution, when to be made, after the debt fatisfi'd.

XXIII. Contribution, whether it can be by the Lawes of England to him whose Goods are taken by Reprize.

XXIV. commissions awarded for the enquiring of depredations, under which the Parties may probably obtain recompence.

D Eprizals known to us by the word of Represalie, or Letters of Marque, in Law have other appellations, as Pignoratio, Clarigatio and Androlepsia, &c. In imitation of that Androlepsia among the Greeks, to seize the three next Citizens of that Place, whither the murderer had fled, and was always given to him who required revenge of the offender; the word (Reprifals) is from the French reprendre and

and reprife, i. e. resumptio, that is to re-take or take again one thing for another, like our Saxon Withernam, all one, both Though the Art is now become lawful by the Law (indeed the confert) of Nations, yet it must have its Standard mark, Law: Reprisefor the same cannot be done by any private Authority, but lia est potestas onely by the Power of that Prince or Republique, whose pignorandi con-Subject the injur'd person is; nor is the same grantable by tra quemtibet, Authority, but where the Party injur'd has Juffice deny'd ris data credihim, or the fame illegally delay'd.

II. By the Law of Nature, no Man is bound for anothers & damnis acce. Act, but only the fuccessour of his Estate, for that Goods ptis. vocabular. and Estate should pass with their Burdens, was introduc'd utrinque Juris. together with the Dominion of things; hence it is, that the Son cannot be molested for the debt of his Father. + neither the Wife for the debt of the Husband, nor the Hus- a ut null ex band for the debt of the Wife; the same being against natural equity, that one should be troubled for the debt of an-

other.

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So it is, that no particular Men ow not, or are oblig'd for the debt which the Community ows, that is, if the Communi- ficut feet. quad ty have any Goods; but if Money be lent to a Community, each particular is naturally bound, as they are a part of the whole, if the Stock publique be wanting : If one lends my broat non tan-Country Money (fayes Seneca) I will not call my felf his debtor, yet will I pay my fhare : And again, Being one of the Peo. Sed tanquam ple, I will not pay as for my felf, but contribute as for my Coun- Publicam publis trey: Naturally, nay, by the very Roman Law, * one Village was not bound for the other, nor one Mans Pollellions benefic c. ao. charged for another; no not fo much as with the debts & cap. 19. publique: the reason being added, that it was against reafon for one to be charged with the debt of another.

III. And though by the Law of Nature, one Mans Goods are not ty'd for the debts of another, no nor for those of the publique; yet by the voluntary Law of Nations, the fame might be introduced and brought in, and the same may stand well with the Laws of Nature; for that might be introduced by custome and tacit consent, when even fureties without any cause, may subject and make lyable their Goods and Estates for the debts of a Stranger. So likewise, that for any debt, which any Civil Society, or the Head thereof ought to make good, or because the Soveraign or a Head hath not done right in anothers debt,

Reprifals are in the Common and Civil tori pro injuris 27 E. 3. Stat. 2. cap. 17.

+ Leg. unica Vicanis. C. BE uxer bre mar. & ne fel.pro patre, totis tit.

Ulpian. Leg. culque univers. nom.

Et, faguli des quam proprisme co partem. Se-. necalib. 6. de

* Leg. nullam, c. de Execut. & Exactionibus.

52. 134. C. Nnico de iniuriis in fexto.

Furs Nat.

but hath made himself lyable to render satisfaction; such In Nov. Jul. a Society may oblige and make lyable all their Goods corporeal or incorporeal, for the reddition of fatisfaction, Hence it was, as the Great Justinian observes, that this custome was Constituted by the Nations, grounded on the urgency Full. Infl. de of humane needs, afferted with the greatest of necessities ; fince without this, great licence would be given and tolerated, for the committing of depredations and injuries; especially if only the Goods of Rulers were made lyable. who feldom polless any thing that for satisfaction the injured may easily come by, whereas those private Men. whose Commerce are various, may be catcht for recompence, fometimes with the greatest of ease, and freest from danger. Besides, the Owners of such prize, being members of the same Society, might more easily obtain mutual Baldus 3. conf. Right, for fatisfaction of the injur'd, and their own future indemnity than Forraigners could, who without such a tve, would be very little regarded.

IV. The benefit which this Custom of Obligation hath now introduced, is become Universal; and common to all Nations; fo that People that are at one time griev'd with this burden, at another time might be eased of the same. and by fuch taking, the oppressed might the more easily obtain Justice, and War be prevented. The Carthaginians would not fuffer Ariston the Tyrian to be taken; for faid they, the same will befall the Carthaginians at Tyre, and in

other Towns of Trade, whereto they refort.

V. A due administration of Justice, is not the least sense, wherein Princes are ftyled Gods: To deny or delay Justice, is injustice; Justice is every Mans Right, who hath not for-

feited what he might claim by the Jus Gentium.

If therefore the Party cannot obtain his Definitive Sentence or Judgement, within a fit time against the Person of whom he complains, or if there be a Judgement given against apparent Right and Law; yet if no relief can be had; the Bodies or movables of his Subject, who renders not Right, may be taken.

VI. In the profecution of which there must be,

1. The Oath of the Party injur'd, or other sufficient proof, touching the pretended injury, and of the certain loss and dammage thereby fustain'd,

58. Bartol. de Repreff. q. s. ad ter. num. 9.

Herod, to whom it was not lawful to make War against the Arabians, might lawfully use pignoration. Fofoph. lib. 6. Livy lib. 34.

c. Si fententie, c. 16. de Sent. excom. in 6. Conflit. Leg. qui reftituere, de rei vindic.

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Of Letters of Marque and Mepzigal:

2. A proof of the due profecution for the obtaining a fatistaction in a legal way.

3. Protelation or denyal of Justice.

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4. A Complaint to his own Prince or State.

5. Requilition of Justice by him or them, made to the Supream Head or State, where Justice in the ordinary courfe was deny'd.

6. Perfiftency still, in the denyal of Justice.

All which being done, Letters of Reprizal under fuch cautions, restrictions, and limitations, as are consonant to Law, and as the special case may require, may issue not only by the Jus Gentium, and Civile, but by the Ancient Clause,

and Municipal Laws of this Kingdom. †

VII. The Reprizals grantable by the Laws of England, nis Reg. m. 22. are of two forts, Ordinary and Extraordinary. The Ordinary are, where any English Merchants or their Goods Part. 2. dors. 48: are spoiled, or taken from them, in parts beyond the Sea part. 2. dorf. by Merchants Strangers, and cannot upon Suit or the 14,15. Kings demanding of Justice for him, obtain the same, he shall have upon testimony of such prosecution, a Writ out Firz-H. N. of the Chancery, to arrest the Merchants Strangers of that Bre. fol. 114. Nation their Goods here in England; the which is grantable Reg. 129. Pat. the Subject opprest of Common Right, by the Chancellour H. 6. par. 1. or Keeper of England, who alwayes in fuch cafe hath the dorf. 15, 17, approbation of the King or Council, or both, for his fo 22. 6 m. 5, 6, doing.

The Extraordinary are by Letters of Marque, for Repa- 18. 22 E. 4. ration at Sea, or any place out of the Realm, grantable by dorf. 2. . 4. the Secretaries of State, with the like approbation of the

King or Council, or both.

VIII. And as Princes by the Laws of Nations, are refponfible for injuries publique, so should they by the most prudent wayes imaginable, prevent those that are private, not suffering Forraigners, if possible, to receive wrongs in their Countries: For, as the Florentine observes, If a Man his Tit. Liv. C: be exceedingly offended, either by the publique, or by any other A Prince in private hand, in a Forraign Nation, and cannot obtain repation lost his Countation according to Justice, he will never leave blowing the coals, trey but for a or cease promoting the injury, till the flame break out in War; load of Sheepin which he cares not if he fees the rume of that Kingdome or Skins. State, where be receiv a his wrongs.

Nor should the Prince or State of the Person injur'd, value

E. 30. the later

Claus. 7. Foban-Pat. 15 E. 3.

Rolls 14. 14 7. par. 2. dorf.

Machiavelon

value his misfortune at fo low a rate, as to deny him Let. ters of Request; for that were to heap up injury upon injury; but likewise if Justice be deny'd after such Request. to Arm him with Power to take fatisfaction by Reprize, Leg. quiresti- vi, manu & militari.

tuere. de rei vindicat.

Generally there always preceed Letters of Request, two or three, more or less; and according to the fatisfaction, fufficient or insufficient, returned in answer to the same, Commissions are awarded.

IX. Subjects cannot by force hinder the Execution, even of an unjust Judgment, nor lawfully pursue their Right by force, by reason of the efficacy of the Power over them : But Forraigners have a Right to compel, which yet they cannot use lawfully, so long as they may obtain satisfaction by Judgement. But if that ceases, then Reprizal is let in.

Res judic. pro veritate babetur; yet it is as true, Fudex male judicans pro injuria tenetur.

domino vem que debitoris non fuiffet, abstuliffet Soluto debitor restitui eam opporteret ; debibavit, Leg. fcripturam ff. de distr. pign.

* Verus debitor licet absolutus fit natura, tamen debitor permanet. Paulus Leg. Julia. D. de cond. indebtor.

Now Judgement is obtained either in the ordinary courfe. by way of Profecution, or Suit, or Appeal from the fame, after Sentence, or Judgement given to a higher Court; or elfe in the Extraordinary way, which is by way of Supplication, or Petition to the Supream Power: but we must understand that to be, when the matter in controversie is. Et cum per in- tam quod merita quam quod modum pracedendi; not doubtjuriam Judicis ful, for in doubtful matters the prefumption is ever for the Judge, or Court.

But the Reprizal must be grounded on a wrong Judgecreditor, quali ment, given in matters not doubtful, which might have obligatum fibi; been redressed one way or other; either by the ordinary, & queretur, an or extraordinary Power of the Country or Place; and the

which was apparently perverted, or deny'd,

But if the matter be doubtful, then otherwise; for in tori scavolare- causes dubious or difficult, there is a presumption alwayes stituendam pro- that Justice was truly administred by them, who were due-

ly elected to publick Judgements.

XI. And yet in this latter Cafe, fome * who are of opinion, that if the Cause were dubious, and if the Judgement were against apparent right, the Stranger oppressed is let into his fatisfaction; and the reason is, because the Judge's Authority is not the same over Forraigners, as over Subjects, for the reason above mentioned.

If an English Merchant shall prosecute a Suit in the Ordinary Courts of Law beyond Seas, and Sentence or Judge-

ment

ment shall pass against him, from which he appeals to the Supream Judgement, and there the first Judgement or Sentence is affirmed, though the Complainant hath received a Judgement against the real right of the Cause, yet this will be no cause for Letters of Reprizal, though perhaps it may occasion Letters of Request (if there be strong circumstances for the same) to have a rehearing of the cause.

But if an English Man shall recover a debt there, and then the Officer, having the debtor in custody, will wilfully let the Prisoner escape, and then become infolvent; the

fame may perhaps occasion Reprizal.

In England, if a Forraigner brings an Action personal against f. S. and the matter is found Special, or General, and mus, nulli negathe Party prays Judgement, and the Court refuses it; and feremus Justithen the Defendant dies, and with him the Action, (the tiam, Grand nature of it being fuch) the Party is here without remedy, Charter. cole the fame may occasion Letters of Reprizals, if it be accom. 2. Inft. 36: panied with those circumstances, that evince an apparent denyal of Justice, i. e. as putting it off from Term to Term. without cause.

An English Man purfues his Right in the Legal Courts beyond Seas; and the Military Governour opposes the profecution, and by force conveys away the debtor and his Cafe of flaugh-Goods, the Sentence or Judgement is obtained, its ulti- ter, Le against mate end being Execution, being thus frustrated, may oc. of Lighern up-

casion Letters of Reprizal.

XII. Persons murdered, spoiled, or otherwise dampnifi'd of Gould and in hostile manner, in the Territories or places belonging Canham Merto that King, to whom Letters of Request are iffued forth, 1670. on wa if no fatisfaction be returned, Letters of Reprizal may if two Letters of fue forth; and the Parties petitioners are not in fuch cases Request are compelled to refort to the Ordinary profecution : But the gone to the Prince of that Country, against whom the same are award. Great Dake of must repair the dammage out of his or their Estates, for reed, must repair the dammage out of his or their Estates, dres. who committed the injuries; and if that proves deficient, * After the it must then fall as a common debt on his Country.

XIII. Such Letters of Request generally allot a time * boyna, and the certain for damages, to be repaired, if not Reprizals to iffue other depreda-

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mings, on the English, his Majesty in 1624. Assired forth his Letters of Request to the States of Holland, for farisfaction within 18 Months; otherwife Letters of Reprinal Vide Journals of that year, and Let Aitzma; p. 48. 13. 41. 82.

Nulli vende

on the Perition chants in Nova

mallacre at Ama tions commit ted by the Fles

XIV. It is not the place of any Mans Nation, but his Domicil; not of his Origination, but of his Habitation, that subjects him to Reprize. The Law doth not confider fo much where he was Born, as where he lives, not fo much where he came into the World, as where he improves the World.

If therefore Letters of Reprizal should be awarded against the Subjects of the Duke of Florence, and a Native of Florence, but Denized or Naturalized in England, should have a Ship on a Voyage for Leighorn, if a caption should be made, the fame is not lawful, nor can the fame be made faine may per haps occulion id

prize.

XV. Nor doth it any where appear, that Reprizals can be granted on misfortunes happening to Persons or their Goods, reliding or being in Forraign parts in time of War there; for if any misfortune happens, or is occasioned to their Effects, or to their Persons, then they must be contented to fit down under the loss; it being their own faults, they would not fly or relinquish the place, when they forefaw the Countrey was subject to the spoil of the Souldiers, and devastation of the Conquerour. The Factions of the Guelfs and Gibellins in Florence,

Vide Machiathat War.

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Regium Nun-

tium Populi

vel History of warring against each other, the Guelf's obtaining the Victory, and thrusting the Gibellins out of it, after they had Mich. 9 E. I. taken the City, Domum enjufdum Hugonis de Papi in boc Rot. 53. (in Regno Anglia demorantis diruerunt, and plundred his Goods Thefaur. Recept. therein, qui Hugo Supplicavit Dom Regt, ut inde Itali Mercatores (of that Faction and City then in England) emendas hic sibi facerent; upon which adjudicatum fait; quod dicti Mercatores, dicto Histoni fatisfaciant pro damnis Vide Rot. Va. Insceptis, & destructione domus fue : Upon which a Writ Sconia, 28 E. 3 of Error was brought, and the Judgement was reversed, in these words; Quod non est consuetudo Anglia de aliqua Civibus corke transgressione facta in aliena Regione, tempore Guerra, vel alio modo, consideratum est, quod totus processus & ejus effectus provocentur, &c.

XVI. By Right (for fo it is now called of rendring Rex facifne tu like for like) there are many Persons exempted, and those whose Persons are so priviledged, have also protection

Romani Quirit. pasa comitesque meos. The Embassadors of the Romans being ill used by the Carthaginians, and Scipio's Army having surprized the Embassadors of the carthaginians, was demanded what should be done to them, answered, not as the Carthaginians have done to the Romans.

for their Goods, some by the Laws of Nations, some by the Civil Law, others by the Common Law; among which Embassadours by the Laws of Nations, their Retinue and Goods are exempt, coming from him, who awarded the Reprize, the Laws of Nations not only providing for the Dignity of him that fends, but likewife the fecurity going and coming of him that is fent.

Nor against those that travel for Religion, nor on Students, Scholars, or their Books; nor on Women or Children, by the Civil Law: nor those that travel through a

Countrey, staying but a little while there.

By the Canon Law, Ecclefiaftical Perfons are expresly ex-

empt from Reprizals.

A Merchant of another place than that against which Reprizals are granted, albeit the Factor of fuch Goods

were of that place, are not subject to Reprizals.

XVII. Ships driven into Port by storm or stress of weather, have an exemption from the Law of Reprizals, ac subditorum incording to the Jus Commune; but by the Law of England nocentium, ut otherwise, unless expresly provided for in the Writ, or ex tali causa Commission.

But if fuch Ship flyes from his own Countrey to avoid confiscation, or some other fault, and is driven in by stress Populos, eo niof weather, she may then become subject to be prize.

But it is not lawful to make feizure in any Ports, but in his who awarded the Reprizal, or his against whom the fame issued; for the Ports of other Princes or States, the fe, & ad Rem

Peace of them is to be maintained. XVIII. * Ships attaqued by those that have Letters of ife transferri, Reprize, and refused to be yielded up, may be assaulted, quod minime and entered; and though it may fall out not by intention, nec fantiori but by accident, that some of those that so resist, may hap- Theologia conpen to be flain, yet the fault will lie at their own doors, sentaneum. Grofor hindering the execution of Right, and that which the tius de Jure bel-Law most justly approves of.

XIX. This right of changing of Dominion, is fo odious, to be of opinithat in the taking of Goods, if by any pollibility the right on by the Law Owners may have restitution, the same has been done; and of Charity, that though a larger time than twenty four hours may happen the profecubetween the capture and recapture, and so may pernoctare for a Man's with the Captor; yet restitution may be made.

inevitably must be by the life of Man, ought to be omitted. Lib. 2. cap. 10. Livy lib. 2. And

obligetur, forte creditum fuit apud aliquos mirum quod crederent unicuigs hominum jus vitæplenum effe in publicam potuli, lib. 3. cap.2. 1.4. And feems tion of Right Goods, which

Bartol. in Leg. Salic. in Lag. ab bostibus. C. de Capt. Conft. Gall. 20. Tit. 13. Art. 24. Conful. Maris 287. Trin. 17 Car. I. Report. Res que infra Prefidia perducta nondum funt, quanquam ab ta, Dominum non mutarunt, ex Gentium Fure.

And therefore if he, who hath Letters of Mark or Remizal, takes the Ships and Goods of that Nation, against whom the fame are awarded, and brings the fame into a Neuter Nation, the Owners may there feize her, or there h anid Bello D. the Admiral may make restitution by Law; as well the de cap. Ang. & Ship's Goods to the Owners, as the Persons captives to their former liberty; for that the fame ought first to have been brought infra Presidia of that Prince or State, by whose Subjects the same was taken,

And with this agrees the Common Law; for a Dunkirker having taken a French Veffel, fold the fame at Weymouth, whither it had been driven before it was brought infra Pra-B. R. Marth fidia Dom. Regis Hifb. it was in fuch cafe rul'd, that if a Ship be taken by Piracy, or Letters of Mark and Reprizal, and is not brought infra Prasidia of that Prince or State, by whose Subjects the same was taken, the same could not become lawful prize, nor were the Owners by fuch a caption bostibus occupa- divested of their property.

But if the Caption be Ships of War, the property will be immediately in the Captors, and never divested, unless

afterwards vi, manu & forti, be in Battle regained.

XX. Upon the sharing the Spoil of the captivated Ships, regard is had to the Ships present, not the Captors only; for his reward must be the encouragement of his Prince, like the Roman Coronas, of which there were various, according to the atchievement of the Conquerour, in imitation of which our Soveraign in his Royal encouraging Medals, follows the example, to his deferving Commanders, as fo many Enfigus to enflame Noble Souls to the performing Acts of Glory and Renown. I fay the profits of Prizes are to be equally divided amongst the Ships prefent, and not folely to the Captor: for if Letters of Reprizal are granted to two Ships, and they happen both of them at Sea to meet a prize, and the one attaques and enters her, by means of which she becomes absolute the Conquerours; yet the other hath right to an equal distribution with the Captor, both in Ship Ric. Bulckleys and Goods, although he did nothing in the Conquest: the reason is, for although he mist the opportunity of taking her, yet the presence of his Vessel armed and prepared for Battle, at the time of taking, became a terrour to the Ship that was so conquered : And by the Law presumed fine ejus, that

Mich. 32 Eliz. Somers and Sir C. Leonard 2. part. 181.

that the other Ship would not or could be so taken. which Law hath passed the current, and approbation of the Common Law, as reasonable, just and equitable, and may be pretended or furmifed to entitle the party Captor, to the making restitution of a movety to his Companion then present.

But if it should so happen, that those to whom Letters of Mark are granted, should instead of taking the Ships and Goods of that Nation, against whom the same were awarded, take or spoil the Goods of another Nation in Amity, this would amount to a down-right Piracy. And the B. R. Rols fol Persons offenders should for such fault create a forfeiture of their Vessel, and the Owners must be for ever concluded by the fame, notwithstanding such Commission.

XXI. Therefore, Letters of Mark or Reprizal iffue not Jac. Waltham, without good and fufficient caution first given for the due observance thereof, according to Law; the transgression

of which creates a forfeiture of the same.

And therefore, having taken a Prize, and brought the fame intra Prasidia, the Captor must exhibite all the Ship. papers, and captived Mariners to be examined in order to Adjudication, till when, Bulk ought not to be broken without Commission, nor may the Captain of the Captor fuffer an imbezlement of the lading, or fell, barter, or difpose of any part, without Commission; for the King hath a proportion in all prizes.

Such Goods fo brought in, are not subject to pay Cu-

ftomes.

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XXII. By the Law of Nations, ipso facto, the Dominion of the things taken by those to whom Letters of Mark are granted, become the Captors, till the debt and costs, that is the original dammage and subsequent charges are fatisfied; which being done, the residue ought to be resto. red: So the Venetians used their equity, having taken the Ships of Genoa, did not spoil any of the lading, but preferved the fame very carefully, till the debt being pay'd; which done, restitution was made of the things entirely, without diminution.

XXIII. When for the fault perhaps of a few, a debt becomes National, by reason of which the Goods of the Innocent become lyable (if taken for fatisfaction) whether by the Law of England, the Party ought to have Con-

B 4

Sir Francis

Moors Rep. 1 vers. Mulgar.

3 Eliz. cap. 9.

12 Carol. II. called the Act of Navigation.

Gregorias 1. 9.

tribution

cap. 19.

tribution, most certain by the Common Law, where more are bound to one thing; and yet when one is put to the whole burden, the Party may have process called Contributione fa-Fitz-H. N. B. cienda, for his relief: but when a debt becomes Univerfal

fo. 162. Old. N. or National, it feems otherwife, * For if one lends my Coun-Bre. 103. Reg. trey money, I will not call my felf debtor, yet I will pay my share: Orig. fo. 176. fo it may feem equitable by the Laws of Charity, though * Seneca Benef.

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not compellable by the Laws of the Land.

XXIV. Yet when depredations have happened to Forraign Merchants, and complaint hath been made, the Kings

of England have often issued forth Commissions to enquire of the fame: and fo it was done upon the Petition of fome Merchants of Genoa, who complain'd against the Inhabitants of the Isle of Garnsey, for a depredation, in taking away and detaining their Merchandize and Goods, to the Pat. 26 E. 3. value of many thousands of pounds, out of a Ship wracked pars 1. m. 16. by tempest near that Isle, by which the Commissioners were impowr'd to punish the offenders, and to make restitution, sa-

Dorso. tisfaction for the dammages.

The like complaint was made by the Merchants of the Duke of Britain, of certain depredations committed by Pat. de An. 6 the Subjects of the King of England, who issued forth the 2. 5. pars I. like Commission, and to give them reparation and dammages for the same; so that if the Subjects of the King of fonis arrest. & England have had their Goods by way of Reprize for the fatisfaction of fuch debt or dammage, they may have the benefit of the like Commissions, to lick themselves whole out of the Estates of the Offenders.

m. 9. Dorfo. De cateris per-

capiend.

CHAP.

CHAP. III. bodi si on saint

Of Privateers or Capers.

I. Of Privateers, whether allowable IX. Of Goods Subject to prize, bom by the Laws of Nature.

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II. Of permission of such by the Laws of Nations.

III. The occasion of their first Institution.

IV. Whether it be lawfull to undertake such an Employment.

V. Of Commissions general to endammage an Enemy.

VI. Of commissions special and to Privateers, and the immunities

they claim by the fame. VII. Of the care that obliged on the issuing forth such commissions.

VIII. Of Provisions made as in reference to their regulating, and e-Specially the last Treaty Marine between England and Holland.

considered in reference to adjudication general.

X. Of the Goods considered in reference to adjudication, on occasions

Special.

XI. Of the lading made prize, whether it draws in a forfeiture of the Veffel, and where otherwise.

XII. Whether Ships refusing to yield up to fuch, life is engaged.

XIII. Privateers where subject to punishment, and their actions occasion a forfeiture of their Vef-

XIV. Of things not subject to Spoil.

X V. Considerations general on Privateers.

A T Aturally every one may vindicate his own right, Lig. ferous. D. therefore were our hands given us: but to profit de Serv. export. another in what we can, is not only lawful, but commen- DD. ad Leg. fi dable; fince nothing is more ferviceable to Man, than quis in fervitu-Man : Now there are divers Obligations between Men, Leg. prohib. c. which engage them to mutual Aid; for Kinsmen assemble de Jure Fisci. and bring help, and Neighbours are call'd upon, and fellow Citizens; for it behooves every one either to take Arms for himself, if he hath receiv'd injury, or for his Kindred, or for his Benefactors, or to help his Fellows, if they be wrong'd : And Solon taught, That Common-wealths would Bartol. in Leg. be happy, wherein every one would think anothers injuries to ut vim. D. de be his own. But when War is denounc't, it matters not Just . Just no what Obligations are wanting, it is enough the Nation is 7, & 8. injur'd in general; for in that every individual is wrong'd, and all participate in the indignities and publick dammages of his Countrey; to revenge or prevent which, is the duty of every member of the same.

H. Since

II. Since therefore it is not against the Law of Nature to fpoil him, whom it is lawful to kill, no wonder that the Laws of Nations permitted the Goods and Ships of Ene. Cicero Offie. 3. mies to be spoiled, when it suffered their Persons to be flain.

III. The approbation of which in the Wars of later The Son of Eato cenjorius, Ages, hath given occasion to Princes to issue forth Comhaving ferved missions to endamage the Enemy in their Commerce, and as a private Souldier of pay to prevent such supplies as might strengthen or lengthen under Pompi out War, to persons to whom the prize or caption belins, the Le- come absolute the Captors, and that to prevent the spare gion being dif- of Ships of force to be absent from their respective Squabanded, the drons or Fleets. Young Man

By those of Holland were termed Capers, by the Spawas refolved to remain with miard they had their denomination, from their respective parts, as Oftenders, Dunkirkers, and the like, in England the Army, though but a call'd Privatoers; how far the actions of those as in relacate wrote to tion to the attacking and killing of the Enemy, or spoiling Pompilias the of their Ships and Goods are lawful, not being command. General, that ed nor hired thereto, may be some question.

he should give

him an Oath the second time; giving this reason, Quia priore amisso, jure cum hostibus pugnare non poterat: Cicero fets down the very words of Cato to his Son, whereby he admonisheth him not to enter into Battle; Neque enim jus effe qui miles non fit pugnare eum boste, Cic. Offic. 1.

> IV. By the Laws of Nations (as hath been faid) it is lawfull for every Subject of that Nation in War, to feize upon the Enemies Goods and Ships, as also to kill them; for they are after War denounc't by Law lookt upon as of no account, and if respect be had to Natural and internal Right, it seems granted to every one in a Just War, to do those things, which he is confident within the just measure of warring, be advantageous to the innocent party; but though there may be fuch Authority given, yet what Title can they claim or appropriate to themselves of the Ships or Goods of Enemies (for furely there is nothing owing to fuch, nor are they lawfully call'd to the fame:) unless they can shrowd themselves under the protection of what they do is only to exact punishment from the Enc. my, by the Common Right of Men,

> V. Commissions to kill or spoil the Enemy, are in two respects; either General or Special; General, as in a tu-

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mult; among the Romans, the Conful faid, Whofoever would have the Common wealth Safe, let him follow me; and to all particular Subjects is fometimes granted a right of killing in felf-defence, when it is publickly expedient, as on a fudden occasion, and the like.

VI. Special Commissions be such as are granted to those that take pay, and are under Orders; the not obeying of which may be punished with death, though the act rem. D. de rel

then facceeds well.

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Others to repair a particular dammage by way of Reprize, the original dammage being turn'd into a Nati- c. Quando lional debt, but that fatisfy'd the other determines, or cent unique elfe to those who receive no pay, but go to War at their Lig. 1 5 2. own charge; and that which is more, administer at their own costs a part of the War, by providing Ships of Force, and all other Military Provisions to endammage the Enemy or their Confederates, the which are termed Privateers, &c. as above, to whom instead of pay is granted leave to keep what they can take from the Enemy; and though such Licence is granted them, yet may they not convert of their own head to their private use those prizes, before the same have been by Law adjudged lawful to the Captors, and the Admiral had his hare.

VII. Nor may fuch Privateers attempt any thing against the Laws of Nations, as to assault or endammage an Enemy in the Port or Haven, under the Protection of any Prince or Republick, be he Friend, Allie or Neuter, for the peace of fuch Places must be kept in-

violably.

Sir Kenelme Digby having obtain'd a Commission against the French, who being in the Streights, was every where honoured as a Cavalier whom the King of Great Britain favoured; in his Voyage he took some Prizes, and coming to Algier, redeemed several Captives, whom he took aboard, and placed in the feveral Vessels he had made prize of, the which he fo effected, that in a short time he became Illustrissimo of fix Ships of War; coming to Cape. Congare, ten leagues from Scanderoone, and having fent a Boat to descry the Road, word being brought that there were in the Road two Venetian Galeasses, with two other Galeons, two English Ships, and several French Ships;

milit.

Ships; Sir Kenelme being satisfy'd of the prize, resolved be to attaque them the next Morning, although the Admi or ral of the Venetians having declared himself Protector of the French, and that he would destroy all the English has Ships of War that he should meet, either in that Republing, resolv'd to engage them; and accordingly bore in the tothem, and the Venetian General weighed anchor to them, and the Venetian General weighed anchor to them, and the Venetian of his Quality, and of his Commission, Being only to endeavour to make prize of the French, Shipman and giving him all the assurance possible of his friendship, and respect to the Republique; but before the Satty was been answered, the Engagement was begun by the English, in the Council board on the complaint of Landy then Embassadour for that Republique, at London, An. 1629. The English in the Grand-Seigniors Road, and thereupon the Bassa of Aleppo, and Cady of Scanderoome, and Merchants, of Marchants, of Marchants, and Avenia or Embargoe on the English Merchants, of Marchants, of Marchants, and Merchants, of Marchants, of Marchants, and Merchants, and Merc don, An. 1629. made an Avenia or Embargoe on the English Merchants, of Vide Hist. Re- till reparation was made, for the breaking the Peace of and

> VIII. In the granting of fuch private Commissions, war there is alwaies great care to be had and taken by caution, to preferve the Leagues of our Ames, recuted and there according to their various and feveral Treaties; and there this Maiefty to preserve the Leagues of our Allies, Neuters and Friends, He fore at this day by the late Treaty between His Majesty and the States of Holland at London, before any Privateer and or Caper can receive Commission, the Commander is obliged to enter before a competent Judge, good and fuf tero ficient fecurity by able and responsible Men, who have no right

Treaty Marine part or interest in such Ship, in 1500 Sterling, or 15500 the at Lond. 1. of Gilders; and when they have above one hundred and hity upo Decemb. 1674. Men, then in 3000, or 33000 Gilders, that they will can In the Com- give full fatisfaction for any dammage or injuries, which will must they shall commit in their Courses at Sea contrary to that they shall commit in their Courses at Sea contrary to that will Treaty, or any other Treaty made between His Majesty defin they have gi- and that State, and upon pain of Revocation and An- they ven such secu-nullity of their Commissions, and for answering of such dammage or injuries, as they shall do, the Ship is made lyable.

IX. If a Suit be commenced between the Captor of a Prize and the Claimer, and there is a Sentence or a

Decree

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alwaysbe mentioned that rity.

Decree given for the party reclaiming; fuch Sentence of Art. 13. lve Decree (upon fecurity given) shall be put in execution, dmi notwithstanding the Appeal made by him that took the cles for their or of prize, which shall not be observed in case the Sentence excellency are pub parbarous usage happens after a caption to be done to the Standard to all and persons taken in the prize, the same shall ipso facto discharge e in fitch a prize, although the was lawful, and the Captains r to hall lose their Commissions, and both they and the of-

to fenders be subjected to punishment.

mif. X. Such fort of Instruments having made a caption of nch Ships bound for an Enemy from Nations Neuter, or in A. partibus, qui ad hip, mity with both the warring States; the lading in order to was be made prize, is reduced to these three several heads:

lift, First, those Goods that are fit to be used in War, under which are included Powder, Shot, Guns, Pikes, Swords, ris editas est? een and all other Instruments and Provisions of Armature fit to

and beufed in the Field or at Sea.

The fecond, are those things that may be used in time one. nts, of War and out of War, as Money, Corn, Victuals, Ships, torum Gracia, of and the like.

tit. 276. 1 gin And the last are those Goods, that are only fit for lu-

ns, mry and pleafure.

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XI. The first are accounted prize without controversie; on, ds, He is to be accounted an Enemy, that supplyes an Enemy with

ere- things necessary for the War.

fty The fecond is to be governed according to the flate eer and condition of the War; for if a Prince cannot well ob defend himself, or endammage the Enemy, without in- 1791. By the fuf tercepting of fuch things, necessity will then give a fourth Article no right to the condemnation : And fo Queen Elizabeth did at the Treaty oo the Hansiatique Fleet taken, laden with Corn for Lisbon; those Goods fty upon consideration of the state of the War, the same be- that may be vill came prize.

ich The last become free, according to that of Seneca; I as in war, (exnat will not help him to Money to pay his Guards; but if he shall cept Ships) may not upon fty defire Marbles and Robes, such things hurt not others, only any account be An they minister to his luxury : Souldiers and Armes I will not call'd prohibihopely him with; if he shall seek for Players and recreations ted, norsubject ich de

mion, except carried to Places belieged. Art. 4. See John Meursius his Danish History concerning the Prohibiting of Goods by those Northern States. Vide poster, the Grand prize condemned by Queen Elizabeth in Tit. Customs.

the Nations of

Art. 14.

In hollium elle bellum necessaria hofti administrat.

Consulat. Ma-Lingua Italica in quem relata Sunt constituti-1 ones Impera-& c. curus libri

Cambden An. used out of war

so soften his fiercenes, I will gladly offer to him: Ships of War the I would not send him, but such as are for phastire and oftentali Es on of Princes forting in the Sea, I will not deny.

XII. If a Privateer take a Ship laden wholly with Coun no And Persons to attempting terband Goods, both Ships and Goods may be subjected lie to relieve an enemy, may in and made prize.

some cases be punished; but if the same be done by necessity of Obedience, though the pa ties are much to be blamed, yet are they not to be punished; and so it was with those which relieved Sir John Old-cafte, with Provisions, being taken, were dis charged.

> But if part be prohibited Goods, and the other part are 10 not prohibited, but fuch as according to the necessity of the the War shall be so deemed, the same may draw a conse fre

Bythe 7th Ar- quential condemnation of Ships, as well as lading. If part of the lading are prohibited, and the other part ticle in the Treaty at Lonare meerly luxurious and for pleafure, only the Goods prodon, if the Skipperwill deliver hibited become prize, and the Ships and the remainder be out the prohi- come free, and not subject to infection. bired Goods

the Ship may proceed with the rest in their Voyage or Course, as they please, and the

Ship shall not be brought into Port.

XIII. If fuch Ships shall be attaqued in order to an exa-Nec reus est mortis aliena, mination, and shall refuse, they may be assaulted, like a inquit Augustihouse supposed to have Theeves or Pirats in it, refuses to hus, qui fui pofsessioni murorum yield up their Persons, may be broke up by the Officer, and the Persons relisters may be flain. ambitum circumduxit : fi a-

liquis e: ipforum ufu percuffus intereat. Publ. Epift. 154.

XIV. But if any of these Privateers wilfully commit any fpoil, depredations or any other injuries, either on the Ships of our Friends or Neuters, or on the Ships or Goods Leg. 5. de Na- of our own Subjects, they will notwithstanding they are

theyl. c. lib. 3. not in pay, be subjected in some cases to death and other Thin 3 Jac. in punishments, according to the demerits of their crimes, Abridg. f. 530. and perhaps may subject their Vessel to forseiture. B. R. Rolls 5. p.

And though by the Law of Nature the Goods of Ene mies are to be spoiled as well as their Persons slain, yet some Goods and things feem exempted, and ought not to be if t spoiled, and therefore it is not lawful to land on the territories of our enemies to spoil places dedicated to God! of

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Was though Pomponius observes, when Places are taken by the Pompon. Lez. tall Enemy, all things cease to be Sacred, the reason given cum loca D. de is, because the things which are call'd facred, yet are they Religiosis. our not indeed exempted from humane uses, but are pub 13. ted lique. The Townsmen, saith Tacitus, opening their Gates, submitted themselves and all they had to the Romans, themletves were spared, the Town was fired, Pompey emered the ctories most Temple by the right of Victory, not as a suppliant, but as a Con- part consist in querour : and though that priviledge may feem right by taking and othe Law of War to a Soveraign, or a General, that in verthrowing tends a Conquest, yet that power may not seem devolved are to him, whose Commission is cautionally to endammage done without y of the enemy only, as in reference to his Commerce and injury of the nfe Provisions of enabling them to with fand the War : Cer- Gods, the minly, that Conquest is poor, whose Trophies and Tripart umphs are made up with Roofs, Pillars, Posts, Pulpits and Pews, and the spoil of Agriculture. Hence it is, that at be this day, the King of France in Germany and Holland, ac- fame ruine, the cepts of Contributions, by which the Cities and Churches Citizens and are not only spared; but even the Country men plough flaughtered; and fow as quietly as if there were no Armies in their Ter- nor is the raritories at all.

Cities, which work is not walls of Cines and Temples of the Gods partake in the Priefts equally pine of facred riches and pro-

phane unlike : fo many are the facriledges of the Romans as their Trophies, fo many are their Triumphs over Gods and Nations: and then goes further, Tot manubia quot mato unt adhuc simulachra captivorum deorum. Mox & bene, quod si quid adversi Urbibus accidit, cadem clades Templorum que & mænium fuerant. cer,

Even upon the same reason, that the Instruments of Husband-men are not to be taken for a pledge by the Civil nor Common Law. Leg. exeunt. C. que res pign. Coke fup.

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XV. Most certain, those forts of Capers or Privaters, being Instruments found out but of latter Ages, any the and it's well known by whom, it were well they were refrained by confent of all Princes; fince all good Men account them but one remove from a Pirat, who without any respect to the cause, or having any injury done them, or fo much as hired for the service, spoil Men and Goods, making even a Trade and Calling of it, amidst the Calamities of a War, and driving a Commerce and Mart with the Spoil, and that with as much peace and content, as if they had never heard of tears, blood, wounds or death, or any fuch thing: fuch to expose their lives against Ships of the like kind, were both honourable and just, or those that

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that should aid the Enemy with Goods prohibited as afore. fuch prizes were possessions most noble; but the Goods. Ships and Lives of the innocent, peaceable Traders to be exposed to rapine and spoil, renders them worse than the Roman Lictors, by how much 'tis to kill without caufe, Heads-men executing the guilty, they the guiltless.

. W honoma W It was a high necessity that enforced the English to commissionate such, the number of her then Enemies, covering the Sea, like the Egyptian Locusts; it were well galacontro they were rejected by confent, or if allow'd of, not fubdolly conject to Quarter, when taken by Ships of War : A Trade that St Paul never heard of, when he faid, Who goeth to

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and to war at his own charge? Gods. the ovillogs of anabling theman wir about the War : Co

Minis, that Conquest is pour, whole Trophies and Tr end Tompics inologate made un with Roots, Piliats, Polis, il aloits and of the Gods ewer and the flood of Acrientment Attouce It is that at partake in the history the King of France in General yand of Land, acfine mine, the of Constantions, by which the Cities and Churches Priests equalionly spared; but even the Countrymen plough no Armies in their Ten nor is the reflavolucred;

riches and pro-Plane unlike : fo many we the Louisdges of the Romans as their Rophies, to many are heir Triumphs over Ocels and Marious : and then goes farther. The marking open mishad ados finalating or the conditions. Acre in long, and figure about 90 delets and Alt casism classes Templer - one Drominics (a.e. t. I wen upon the fame a mon, that the Information of Hubstyl-man are not to be reken for a pledge by the Civil vor Common Law. Legismus. Come no pige. Colec lap.

> Aoft certain, those focts of Capers or Privaters, being had amonts found out but of latter Ages, and all's well know a by whom, if were well they were ekrained by confort of all Princes; dince all good Men ac count them but a remove from a Pirat, who wildows any respect to the cause, or having any injusy done there; or to much as hired for the fervice, spoil Men and Goods,

the Spoil, and that with as much pence and content, as if they had never besid of tears, blood, wounds or death, wany fach thing; hech to expose their lives against Ships of the like kind, were both honourable and jult, or those

making even a Trade and Calling of it, article the Care

CHAP. IV.

Of Piracy.

I. Pirats what ?

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II. Of the Duty incumbent on Princes and States, as in reference to such, and whether lyable for the dammages they commit.

III. Pirats where they hold a Society, how the same is esteemed in Law, and of equality held by

them.

IV. Where such may obtain the right

of Legation.

V. Ships where liable for the redemption of the Master, who remains as a pledge for the freedome of not.

VI. An Oath given for the discharge of a Ship from Pirats to pay them a summe, whether the same ought

to be performed.

VII. Forraigners spoiled by English Pirats may pursue for Ju-H. 8.

VIII. Where the Subjects of a Forraign Nation committing Piracy may be punished for the same.

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IX. Piracy committed by the Subjects of a Nation in Enmity with the Crown of England, whether the same is Piracy, or otherwise punishable.

X. Piracy committed in the British Seas, properly punishable by the crown of England, and not other-

wife.

XI. Piracy committed on the Ocean where the Pirats may be executed

by the Laws of Nature.

XII. Pirats overcome in the attempt, where the Captors may execute them without any Tryal or Judgement.

XIII. Pirats attempting to rob, commit a murder, whether all are principal, or only the flayer, and the reft accessories.

XIV. If the Subjects of one Forraign Nation rob another, and bring the booty into England, whether the party injured may proceed Criminaliter for punifiment, and Civiliter for restitution.

XV. Pirat takes only Men 3 and no part of the lading, whether the

Same be Piracy.

the Ship and Lading, and where XVI. Where a Master may commit Piracy of those things that are committed to his charge, and where otherwise.

> XVII. Where Piracy may be, though there be nothing taken; and where Goods are taken out of a Ship, and

no body in it.

flice, within the Statute of 28 XVIII. The Captain and Crew of a Vessel, that have a Commission of reprize commit Piracy; whether be that procured the same and imployed them, ought to answer the damage.

XIX. Of Goods taken and retaken by a Friend, whether the property of

the prize is altered.

XX. Of Restitution made of Goods taken and retaken from a Pirat; by the Law Maritime.

XXI. Of Restitution frustrated by the

Common Law.

XXII. Of Piracy; as in reference to matters criminal, and how punishable this day by the Laws in England.

XXIII. How the Statute of 28 H. 8. operates, as in reference to Pi-

racies.

XXIV. Whether depredation in Ports Ports within the Realm, remains Robbery at the Common Law, or Piracy by the Law Maritime.

XXV. Where benefit of Clergy is allowable to Pirats, and where not; and whether by the pardon of all felonies, Piracy is included.

XXVI. Whether attainder for Piracy works a corruption of Blood, and forfeiture of Lands.

XXVII. Goods taken at Sea and

brought to Land, the parties may be indicted upon the Statute of 28 H. 8. cap. 14.

XXVIII. where the Admiralty claiming with an original or a concurreat Jurisdiction, the Common Law will not intermeddle.

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XXIX. How satisfaction of old was repaired to persons robbed, and bow the offenders were punifb-

Pirat is a Sea Thief, or Hoftis humani Generis, who for to enrich himself, either by surprize or open force, fets upon Merchants and others trading by Sea, ever spoiling their lading, if by any pollibility they can get the mastery, fometimes bereaving them of their lives, and finking of their Ships; the actors wherein Tully calls Enemies to all, with whom neither Faith nor Oath is to be

kept. II. By the Laws of Nature Princes and States are re-

fponfible for their neglect, if they do not provide Ships of War, and other remedies for the restraining of these fort of Robbers; but how far they are bound either by the Civil Law, or Common Law of this Kingdome, may be fome question: for it is agreed they are not the cause of the unjust spoil that is committed by them, nor do they If the offen. partake in any part of the plunder; but if a Prince or ders could be State should fend forth Ships of War or Commissions for reprize, and those instead of taking prizes from the Enemy, turn Pirats, and spoil the Subjects of other Friends; there has been fome doubt, whether they ought not to they have any make satisfaction to the parties injured, in case the of fenders should prove unable: furely there is no more reasame ought to son for this latter than the first; because Princes and go towards the States may give all their Subjects power to spoil the Enethe dammage, my; nor is such a Permission any cause why dammage was done to our Friends, when even private Men without any fuch Permission, might send forth Ships of War; becommonly ta- fides it is impossible that Princes or States should fore ken upon the fee, whether they would prove fuch or not; nor can

found, they ought to be yielded up to Justice; and if Estate, the reparation of

Caution is fuch Commic it be avoided, but we must imploy such, otherwise no from to prevent the same, if possible. They are generally restrained by Proclamation then a War breaks forth, and commanded, that none prefume so fet forth, without

. Commillion.

Army

Army or Fleet could be prepared; neither are Kings to be accused if their Souldiers or Mariners wrong their Confederates, contrary to their commands, though they are obliged to punish and yield up the offenders, and to fee that legal reparation be made out of the Estate of the Pirats: If Letters of Marque or Reprizal be granted out to a Merchant, and he furnishes out a Ship with a Captain and Mariners, and they instead of taking the Goods or Ships of that Nation against whom their Commission is awarded, Artarthereas take the Ship and Goods of a Friend, this is Piracy; and if the Ships arrive in * England, or in any other of His tween England Majesties Dominions, the same shall be seized, and the owners for ever lose their Vessel. +

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Conflit. Gallia Tom. 3. tit. 3. Constitutione An. 1583. capa 44. Vide etiam tom. conflit. 3. tit. 2. constit. An. 1543. capa 44. Vide 21. ty at Breda beand Holland and the 15th Article in the Marine Treaty

at London 1674. † Trin. 7 Jac. in B. R. Rolls f. 530. Vide Sir Francis Moors Reports I Fac. Waltham verfus Mulgar.

From hence it is, that Princes and States are very cautious upon this we call Jure Belli privati, how they engage themselves, or those who seek reparation for wrongs before received; for the person injured governs not the action, but devolves the power to some other hired for that particular use, whose Law is no more than this, There is most Right where is most Pay or Prize : Unhappy state of Man, whose support and living is maintained only by exposing himself to death! a Calling that nothing can make it honest, but the highest Necessity or pious Charity. And therefore those that iffue forth fuch fort of Commissions, generally take caution for their returning within a convenient time, and not to wander in that unhappy condition.

III. Though Pirats are called enemies, yet are they not properly fo termed: For he is an Enemy, fays Geere, who hath a Common wealth, a Court, a Treasury, Consent and Concord of Citizens, and some way, if occasion be, of verb fiends Peace and League; and therefore a Company of Pirats or Free-booters are not a Common-wealth, though perhaps they may keep a kind of equality among themselves, without which no Company is able to confift; and though it is feldome they are without fault, yet hold Society Captivis to maintain Right, and they do Right to others, if not in all things according to the Law of Nature (which among

Lig. Holles Le

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many people is in part obliterated) at least according to agreements made with many other Nations; or according to Custom: So the Greeks at what time it was accounted lawful to take spoil at Sea, abstained from slaughter, and populations, and from stealing Oxen that plowed, as the Scholiast upon Thucydides observes, and other Nations living also upon the spoil when they were come home from Sea, fent unto the Owners to redeem (if they pleafed at an equal rate) what they were robbed of at Sea, and at this day, if a Ship hath the Emperour of Barbary's Protection, the Pirats of that Nation (if they feize) will restore, and if there be no protection, yet if taken within fight of their Castles, the Prize is not absolute; but if resistance is made, and there be a Caption, she then becomes the Captors for ever; as the price of blood.

IV. Pirats and Robbers that make not a Society, i.e. fuch a Society as the Law of Nations accounts lawful, are not to have any fuccour by the Law of Nations. Tiberius, when Tacfarinas had fent Legates to him, he was displeased that both a Traytor and a Pirat should use the manner of an Enemy, as Tacitus hath it; yet fometimes such Men 3. Cafar lib. 3. (Faith being given them,) obtain the right of Legation as the Fugitives in the Pyrenean Forrest, and the Banditi at Naples, and Solyman the Magnificent, having entertained Barbaroffa the famous Pirat, fent word to the Venetians, that they should use him and esteem him no more as a Pi-

rat, but one of their own Port.

V. If a Ship is affaulted by a Pirat, for redemption of which the Master becomes a Slave to the Captors, by the ff. ad Legem Law Maritime the Ship and Lading are tacitly obliged for

Rhod. de jattu. his redemption, by a general contribution.

But if a Pirat shall feign himself stranded, and to duccoy the Merchant Man for his relief, shall fire his Guns, or wave his Colours, who accordingly varies his course for his affistance, and the Pirat enters him, for redemption of which he becomes a Slave to the Pirat, there Contribution shall not be made, and if the Ship loses any of her Lading, the Mafter shall answer the same.

VI. A Pirat attacques a Merchant Man, and enters her, for Redemption of which the Master gives his Oath, at a time and place to pay the Pirat a fumme certain; by some it hath been held, that the Master commits not

Tacitus Annal. de Bello Civ.

Cure Port

Hist. Republ. Venicef. 91.

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perjury, if the price promifed for redemption be not brought according to the Oath; because that a Pirat is Leg. Bona finot a determinate, but a Common Enemy of all, with des. D. Expos. whom neither Faith nor Oath is to be kept; but that is no reason for the assoiling of the Vow: for though the Person be deficient, yet the Just God is concerned; nor can that Person that hath promised a thing, satisfie his Conscience after he hath once delivered it to him, to recover it back again; for the words in an Oath, as to God. are to be understood most simply, and with effect; and therefore he that returned fecretly to the Enemy, and again departed, made not good his Oath concerning his return.

VII. If an English Man commit Piracy, be it upon the Subject of any Prince or Republique in Amity with the Crown of England, they are within the purview of the Stat. of 28 H. 8. and so it was held where one Winterson, On a Com-Smith and others had robbed a Ship of one Maturine Gan. mission grountier, belonging to Bourdeaux, and bound from thence with ded on the French Wines for England, and that the fame was Felony Rot. Admir. by the Law Maritime, and the Parties were convicted of 28 Eliz.m. 23. the fame.

VIII. And so it is, if the Subject of any other Nation or Kingdome, being in Amity with the King of England, commit Piracy on the Ships or Goods of the English, the fame is Felony, and punishable by virtue of the Statute, and foit was adjudged, where one Careles Captain of a French Man of War of about forty Tuns and divers others, did fet upon four Merchant Men going from the Port of Brifoll to Carmarthen, did rob them of about 1000, for which he and the rest were arraigned, and found guilty of the Anno 28 Eliz.

Rot. Admir. m. 24.

But before the Statute of 25 Ed. 3. If the Subjects of a Normandy was Forreign Nation and some English had joyned together, and lost by King had committed Piracy, it had been Treason in the English, John, and out and Felony in the Forreigners : And fo it was faid by of the King of Shard, where a Norman being Commander of a Ship, had England, and together with some English committed robberies on the they were as Sea, being taken, were arraigned and found guilty; the now account. Narman of Felony, and the English of Treason, who ac ed Alicus. 40. cordingly were drawn and hang'd.

Affife placet.25. p. Shard. Fide 2 H. s. cap. 6.

Selden Mare

Reginor Grim-

mirairy.

But now at this day they both receive Judgement as Fe-

lons, by the Laws Maritime.

IX. If the Subjects in enmity with the Crown of Eneland be Sailers aboard an English Pirat with other English, and then a robbery is committed by them, and afterwards are taken, it is Felony without controversie in the English, but not in the Strangers; for they cannot be tryed by virtue of the Commission upon the Statute, for it was no Piracy in them, but the depredation of an Enemy, for which they shall receive a tryal by Martial Law, and Judgement accordingly.

X. Piracy committed by the Subjects of the French King. clausum, lib. 1. or of any other Prince or Republique, in Amity with the tap. 27. Case of Crown of England upon the British Seas, are punishable bald in tempor. properly by the Crown of England only, for the Kings Edw. 1. Cited of the same have iftud regimen dominium exclusive, of the in 4. Inft. f. 142. Kings of France, and all other Princes and States whatin Cof the Ad- foeyer.

XI. If Piracy be committed on the Ocean, and the Pirats Injicere mahum payes tra- in the attempt there happen to be overcome, the Captors exerunt debitum are not obliged to bring them to any Port, but may ex-Ghi, & sermone pose them immediately to punishment, by hanging them Mus est juris; up at the main Yard end before a departure; for the old natural liberty remains in places where are no judgements.

And therefore at this day, if a Ship shall be in on a Voyaicis auttorita- age to the West-Indies, or on a Discovery of those parts of the unknown World, and in her way be affaulted by a Pirate, but in the attempt overcomes the Pirate, by the Laws Maritime the Vessel is become the Captors; and they may execute such Beaft? of Prey immediately, without any fo-

lemnity of condemnation.

Leg. extat. D. quod metus.

nam manus in-

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XII. So likewife, if a Ship shall be assaulted by Pirats, and in the attempt the Pirats shall be overcome, if the Captors bring them to the next Port, and the Judge openly rejects the Tryal, or the Captors cannot wait for the Honorius & Judge without certain peril and lofs, Justice may be done circo Judicio upon them by the Law of Nature, and the fame may be rum vigor Ju- there executed by the Captors.

Theodofius : idrifque publici

tutela in medio constituta, ne quis quam fibi ipsi permittere valeat ultionem. Leg. nulli C. de Judais.

Cajus Cafar being but a Private Man, purfued the Pirats, by whom he formerly had been token and spoiled by them, and making up to them with fuch a Fleet as he possibly in haste could get ready, attaqued, burnt and destroyed their Ships, and the Men he brought back to an Anchor, where repairing to the Proconful to do Justice, who neglecting, himself returned back, and there hang'd Cafar. them up.

Plutarch in

XIII. If a Pirat at Sea affault a Ship, but by force is Ralph williams prevented entering her, and in the attempt the Pirat hap- indicted for pens to flay a Person in the other Ship, they are all principalls the murder of in fuch a murder, if the Common Law hath Jurisdiction of rey, and Bridthe cause: but by the Law Maritime, if the Parties are ges, Black and known, they who gave the wound only shall be principalls, others, as 4cand the rest accessories; and where they have cognizance cessory. Rossa of the principal, the Courts at Common Law will fend

them their accessory, if he comes before them.

XIV. If a Spaniard robs a French Man on the High Res que intra Sea, both their Princes being then in Amity, and they Prafidia pridalikewise with the King of England, and the Ship is brought the mondum furt, into the Ports of the King of England, the French Man bollibus occas may proceed criminaliter against the Spaniard to punish ta, dominum him, and civiliter to have Restitution of his Vessel: but non mutarunt en if the Vessel is carried intra Presidia + of that Prince, by Gentium jure. whose Subject the same was taken, there can be no proceeding civiliter, and doubted if criminaliter; but the cap. 9. 6. 16. French Man " must refort into the Captor or Pirats own Countrey, or where he carried the Ship, and there pro- in B. R. Marsh's ceed.

A Dutch Man, but Naturalized by the Duke of Savoy, & Leg. Lationes and living at Villa Franca in his Dominions, procures a D. de cap. Lig. Commission from the States of Holland, and coming to position a Pica-Leighorn, there rid with the Colours and Enfigns of the ead. Tit. the Duke of Savoy, the Ship Dyamond being then in Port, and having received her lading, was afterwards in her Voyage home surprized by that Caper, and brought into Villa Franca, and there condemned and feld to one Polessan; was in 1663. which Ship afterwards coming for England, the Plaintiffs Adjudication having notice, made a feizure, and upon Tryal Adjudi- passed 13th o cation passed for the Plaintiss, the original proprietors: May, 1670 there was an Appeal to the Duke of 1006; but nothing came of it. Rott. Admir. in and

one Fohn Ter-Admir. 28 El. m. 24. rd.f. 134,135. quanquam ab. Grot. de jure Belli ac Pacis + Trin. 17 Car.

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for though the Ship of War and the Captors were of Savon and carried thither; yet being taken by virtue of a Dutch Commission, by the Law Maritime, she must be carried in fra Prasidia of that Prince or State by virtue of whose Commission the was taken.

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Nor can fuch carrying of the Enlignes or Colours, of the Duke of Savoy, who was then in Amity with the Crown of England, or the Commander, though a Subject of that Prince, make him a Pirat, or subject them or those to whom they have transferred their interest of the Prize any wayes to be questioned for the same Criminaliter; for that the Original Quoad as to the taking was lawful, Bulffred. 3. 4 as one Enemy might take from another; but Guiliter the fame, for that the Captor had not entitled himself to a firm possession. b

part. fol. 28. Case of Samuel Pellagy. A Grotius de Fure Belli ac 9. 5. 15,0 16. Mich. 8 Fac. B. R. Brownlow 2. part. Westons C.

And therefore in all Cafes, where a Ship is taken by Letpacis lib. 3. cap. ters of Marque or Piracy, sifthe fame is not carry'd infra Prasidia of that Prince or State, by whose Subject the same was taken, the Owners are not divested of their property, but may re-feize wherefoever they meet with their Veffels.

> XV. If a Pirat attaques a Ship, and only takes away fome of the Men, in order to the felling them for flaves, this is a Piracy by the Law Maritime; but if a Man takes away a Villaine or Warde, or any other Subject, and fells them for flaves; yet this is no robbery by the Common Law.

XVI. If a Bale or Pack of Merchandise be delivered Go.3. Inft. 100. to a Master to carry over Sea to such a Port, and he lib. 8. f. 22. B. * caley's C. but goeth away with the whole Pack or Bale to another Port. Black Maile & and there fells and disposes of the fame, * the same is no fuch forts of felony. taking in Cumberland, North-

umberland, and westmortand was Felony. 43 Eliz. cap. 12. * ff. Nauta Caup. 1. 1. fell. 3. Stab.

Glanvil. lib. But if he opens the Bale or Pack, and take any thing 16. cap. 13. out, animo furandi, the same may amount to such a Larceny, in-

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cenv. as he may be indicted in the Admiraley, though it 13 E. 4.94 amounts not to a Piracy.

Yet if fuch a Master of Ship shall carry the Lading to the Port appointed, and after retakes the whole Pack or Stab. lib. Sect. Bale back again, this may amount to a Piracy; for he 7- feet. recipit. being in the nature of a Common Carrier, the delivery had taken its effect, and the privity of the Balement is de- 107, 108. termined.

Co. 3. Inst.

XVII. If a Pirat shall attacque a Ship, and the Master for the redemption shall give his Oath to pay a summe certain; though there be no taking, yet is the same Piracy, by the Law Maritime.

44 E. 3. 16 4 H. 4. 2. 6 ad Leg. Rhad. de jact. l. 2. 5 finavis à Piratis redempta &c. 14 E. 2. Cor.

If a Ship shall ride at Anchor, and the Mariners shall be part in their Ship-Boat, and the rest on the shore, and none shall be in the Ship, yet if a Pirat shall attacque her and rob her, the fame is Piracy.

> Trin. 7 Fac. in B. R. Rolls A.

XVIII. A Merchant procures Letters of Marque or Reprize, and then delivers the Commission to Persons to endeavour a satisfaction; if such Persons commit Piracy, the bridg. 530. Vessel'is forfeited without controversie; but the Merchant is no waves lyable to make fatisfaction; for though the Superiour shall answer for the actions of his Ministers or Servants, yet that is introduced by the Civil Law; but this 1583.6.44. question must be decided by the Laws of Nations, by virtue of which fuch Commissions are awarded or granted; the which does exempt any Man to answer for the dammages ports Maltham of his Servants, unless he fore-knew that they would com- vers. Mulgar, mit fuch a Piracy or Spoliation, or any way have abetted or confented to the fame, which right may be forfeited, and the Civil Law let in to acquire fatisfaction.

Constit. Gallie tom. 3. tit. 3. Constit. Anni

Vide Sir Prancis Moore Re-

But if a Ship shall be at Sea, and in necessity, if she attaques another Ship, and takes out fome Victuals, Cables, cum in eaden; Ropes, Anchors or Sailes, (especially if that other Ship D. ad L. Rhod. may spare them) this is not Piracy; but then the party Leg. que name must pay ready Money for such things, or give a Note or frag. S. quod Bill for the payment of the value, if on this side the ait D. de in-Straites of Morocco, within four mouths, if beyond, within admodum, feet. twelve months.

cen. Leg. quem-

Lig. Aquiliam. 27 H. 8. cap. 4.

pon. de acqu. rii dome

XIX. By the Law Maritime, if Goods are taken by a Per Leg. Pom- Pirat, and afterwards the Pirat attaques another Ship, but in the attempt is conquered, the Prize becomes absolute the Captor's, faving the account to be rendred to the Ad miral, And it is accounted in Law a just caption of whatfoever may be got, or taken from fuch Beafts of prey, be the fame in their own or in their Successors possession.

But then an account ought to be rendred to the Admiral, who may (if they happen to be the Goods of the Fellow Subject of the Captors, or of Nations in A-Per Lig. Mu- mity with his own Soveraign) make restitution to the Owner, the costs and charges, and what other things in equity shall be decreed to the Captor, first considered and

deducted.

27 E. 3. c. 13. XX. By the Statute of 27 Edw. 3. cap. 13. If a Merchant lose his Goods at Sea by Piracy, or Tempest (not being wrackt) and they afterwards come to Land; if he can make proof they are his Goods, they shall be restored to him in places Guildable, by the King's Officers and fix Men of the Countrey; and in other places by the Lords there and their Officers, and fix Men of the Countrey.

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This Law hath a very near relation to that of the Ramans, called De Usu-Captione, or the Atimian Law; for Ativisus enacted, that the Plea of Prescription or long Possesfession, should not avail in things that had been stoln, but the interest which the right Owners had should remain perpetual; the words of the Law are thefe, Quod surreptum Jure Rom. l. 1. eft, ejus rei aternitas Auctoritas effet, where by Auctoritas is

oap. 11. meant Jus Dominii.

XXI. Yet by the Common Law of England, it has been held, that if a Man commit Piracy upon the Subjects of another Prince or Republique (though in League with us) and brings the Goods into England, and fells them in a Mich. 13 Fac. Market Overt; the same shall bind, and the Owners are in B. R. Sir Ri- for ever concluded, and if they should go about in the Admirally to question the property, in order to restitution,

they will be prohibited.

XXII. This offence was not punishable by the Common Law, as appears by the preamble of the Statute of 28 H. 8. cap. 15. but the same was determined and judged by the Admiral, after the course of the Civil Law; but by force of the faid Att, the fame is enquired of, heard and deter-

tier ea. cap. & post.

10.7 922.14

· Sigonius de

chard Bingly's Case. Roll's Abridgement

L. 530.

determined according to the course of the Common Law, as if the offence had been committed on Land of to

XXIII. This Act does not alter the offence, or make the offence Felony; but leaves the offence as it was before this Act: viz. Felony only by the Civil Law, but giveth a mean of Tryal by the Common Law, and inflicteth pains of death, as if they had been attainted of any Felony done upon the Land.

The Indictment must mention the fame to be done upon

the Sea.

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A Pardon of all Felonies does not extend to this offence, but the fame ought especially to be named.

Though there be a forfeiture of Lands and Goods, yet

there is no corruption of Blood.

There can be no Accessory of this offence, tryed by virtue of this Statute; but if there be an Accessory upon the Sea before the to a Piracy, he must be tryed by the Goil Law.

The Statute of 35 H. 8. cap. 2. taketh not away this Sta. ners, then there tute for Treasens done upon the Sea, Clergy is not allowable to the party on the Statute 28 H. 8. vide 14 Jac. in B. R. Moore 756. placet 1044.

Though a Port is Locus publicus uti pars Oceani, yet it hath nota co. Inst. been resolved more than once that all Ports, not only the 389.

Town, but the Water is infra corpus Comitatus.

XXIV. If a Pirat enters into a Port or Haven of this Kingdom, and a Merchant being at Anchor there, the Pirat affaults him and robs him, this is not Piracy, because the thers robbed fame is not done fuper altum Mare; but this is a down-right the Ship of Carobbery at the Common Law, for that the Act is infra prainslue of the corpus Comitatus, and was inquirable and punishable by the Common Law, before the Statute of 28 H. 6. cap. 15. a Merchant in London; and they were indicted for it at the Common Law, and were found guilty of the fame. Anno 23 Car. 2.

XXV. So if such a Piracy be made in a Creek or Port, in fuch Cafes it has been conceived, that Clergy is allow- Moore 756. 1 able upon the Statute of 28 H. 8. but if it be done super altum Mare, there no Clergy is allowable : by the Pardon of all Felonies, at the Common Law, or by the Statute Law, Felony Super altum Mare is not pardoned; for though

Jac. par. 1044.

Merchandize

And the fame was fo ruled by the Opinion of

Sir Lyonel Jenkins, and the rest of the Lords the Judges, upon the Piracy committed by Cufack and others, and denyed; and he was afterwards executed Anno 1674. Vide 19; E. 3. Cor. 124. 9 H. 4. 2.

Moore 756.

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II. Dala

But if the party be attainted before the Admiral, and not Commiffiois no corruption of Blood or forfeiture of Lands; Quod

Hyde and od

the King may pardon this offence, yet being no Felony in the eye of the Law of this Realm, but only by the Guil Law, the Pardon of all Felonies generally extends not to it; for this is a special offence, and ought specially to be mentioned.

9 E. 4. 28. 3. Infl. fo. 112.

XXVI. A Man attainted by virtue of that Statute, fortited in cokes feits his Lands and Goods, yet there works no corruption of Blood, by virtue of that attainder; nor can there be any Accessory of Piracy by the Law of this Realm: but if it falls out that there is an Accessory upon the Sea, fuch Acceffory may be punished by the Civil Law, before the Lord Admiral, but he cannot be punished by virtue of this Act, because it extends not to Accessories, nor makes the offence Felony.

28 Eliz. But-

XXVII. If one steals Goods in one County, and las Case cited brings them into another, the Party may be indicted in 3. Infl. fo. 113. either County; but if one commits Piracy at Sea; and brings the Goods into a County in England, yet he cannot be indicted upon that Statute, for that the Original taking was not Felony, whereof the Common Law took conuzance.

3 Bulftrod.f.27.

XXVIII. If a Man is taken on suspicion of Piracy, and a Bill is preferred against him, and the Jury find Ignor amus; Marsh's Case if the Court of Admiralty will not discharge him, the Court 23 Jac. in B. R. of Kings Bench will grant a Habeas Corpus, and if there be good cause discharge him, or at least take Bayle for him: But if the Court suspects that the Party is guilty, perhaps they may remand him; and therefore in all Cases, where the Admiralty legally have an Original or a concurrent Jurisdiction, the Courts above will be well informed before they will meddle.

* Yelverton dings Case, Tench vers. Harrifon B.R. Styles 371, 340. 2, Dorf. 24. de audiendum & terminandum Mercatorious

pradatis.

sino a tail

If a Man be in custody for Piracy, if any aids or assists 134, 135. Sca- him in his escape, though that matter is an offence at Land, * yet the Admiralty having Jurisdiction to punish the Principal, may have likewise power to punish such an offender, who is lookt upon quali an Accessory to the Piracy; but to † 50 E. 3. par. rescue a Prisoner from an Officer of theirs, they may examine the Cause, but they cannot proceed criminally against the Offender.

XXIX. † Anciently when any Merchants were robbed Super mare de- at Sea, or spoiled of their Goods, the King usually issued out Commissions under the Great-Seal of England, to en-

quire

enquire of fuch depredations and robberies, and to punish the Parties; and for frauds in Contracts, to give dam- m. 24. Derf. the mages to the Parties, and proceed therein fecundum Le. Cafe of will. gem & consuctudinem Anglia, secundum Legem Mercatoriam, de Dunstaple a & Legem Maritimam; all three Laws included in the Com ton. millions.

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One Marsh a Fisherman being at Sea, was taken by m. 4. Dorsh pro Pirats, and all which he had; after that, the Pirats took willielmo Perint another Ship belonging to the Dane, and the Pirats having Domengo rifled the Ship, and taken the best of the Goods of the ribus. Danes, the Pirat put aboard the Fisherman, and so suffered him to depart, who landing here, went immediately to Dr Talbot, a Civilian, and shewed him all this matter. and defiring his advice, who directed an Inventory to be made of the Danes Goods in his Ship; the Dane afterwards coming into England, and having intelligence of the matter, profecuted the Fisherman in the Admiralty; and although Ignoramus was found, yet they there detained him; upon which a Habeas Corpus was prayed, but denyed by My Lord Coke Chief Justice, for no other reason, but because the truth of the matter was opened, which gave the Court cause to suspect him of Piracy; otherwise if he had moved barely upon the Ignoramus found, quod nota, Pasch. 13 Jac. in B. R. the King vers. Marsh, Buffred 3. part. fol. 27.

Pat. 32 E. 1.

CHAP. V.

are or fixed dependentions and nockeries, and to reading

The Right of the flagg, as to the acknowledging the Dominion of the Britis Seas.

I. Considerations general as in reference to the fame.

Pet. 6 1. 1. 11. 24. Dork the Case of Pik

de Prindayle a TILZCHOLE, I.

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E. A. 1995 . F. 2 Bin T containing

> II. Whether Princes may have an exclusive property in the Sea.

III. That fuch an exclusive Dominion may be, and proved.

Division, as the Land general.

V. considerations general as in reference to Maritime Cities touching Sea-Dominion.

VI. Of the Sea, by reason of its inflability, whether capable of subjedion.

VII. Of the Dominion of the British Sea afferted long before, and ever fince the Conquest of this Iste by the Romans.

VIII. The Duty of the Flagg, but a consecutive acknowledgement of that Right, and of the Ordinance of Hastings declaring that Customary obeyfance.

IX. Considerations bad on some Treaties, in reference to the afferting the Duty of the Flage.

IV. Of the Sea, whether capable of X. Of the extent bow far that Duty is required and payable.

XI. Of the Duty of the Flage, not a bare Honourary Salute, but a Right.

XII. Of the importance and value of the same as well in Nations Forraign, as in England.

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XIII. Of the Duty of the Flagg, not regarded as a Civility, but commanded as a Duty.

XIV. Of the importance of that acknowledgement.

Fter the Writings of the Illustrious Selden, certainly it's impossible to find any Prince or Republique; or fingle Person indued with Reason or Sence, that doubts the Dominion of the British Sea, to be intirely subject to that Imperial Diadem, or the Duty or Right of the Flagg, which indeed is but a confecutive acknowledgement of that ancient Superiority, yet there have not been wanting fome, who though they have not questioned the former, have highly disputed the latter.

But there are some fatal periods amongst our Northern Regions, when the Inhabitants do become fo brutal and prejudicate, that no obligation of Reason, Prudence, Conscience or Religion can prevail over their passions, especially if they become the devoted Mercenaries of an implacable Faltion; in opposition to all that can be called either Just or Honourable, we need not rip up the carringe of that late infolent Son of a Tallow Chandler, whose Investiga deportments made him no less insupportable at Home. than he was amongst Forreign Princes; the testimonies of his greatest Parts and Abilities, being no other than monuments of his Malice and Harred to this Nation, and records of his own folly: But Princes are not to be wrangled out of their Ancient Rights and Regalities by the fubtil argument of Wit and Sophistry; nor are they to be supplanted or overthrown by Malice or Arms, fo long as God and Good Men will affift, in which His Sacred Majesty did not want, when he afferted his Right with the Blood and Lives of fo many thousands that fell in the dispute.

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II. That Princes may have an exclusive property in the Soveraignty of the several parts of the Sea, and in the pasfage, Fishing and shores, is so evidently true by way of fact, as no Man that is not desperately impudent can deny it; the confiderations of the general practice in all Maritime Countries, the necessity of Order in mutual Commerce, and the Safety of Mens persons, Goods and lives, hath taught even the most Barbarous Nations to know by the Light of Humane reason, that Laws are as equally necessary for the Government and Prefervation of the Sea, as those that negotiate and Trade on the firm Land; and that to make Laws and to give them the Life of Execution, must of necessity require a Supream Anthority, for to leave every part of the Sea and Shores to an Arbitrary and Promiscuous

use, without a correcting and securing Power in case of

wrong or danger, is to make Men with the like condi-

tion of the Fishes, where the greater devour and swallow

the lefs. III. And though the Sea is as a High-way, and common to all; yet it is as other high-waies by Lands or great Rivers are, which though Common and Free, are not to be usurped by private Persons, to their own entire service; but remain to the use of every one, not that their Freedome is such, as that they should be without Protestion or Government of some Prince or Republique, but rather not exclude of chizzola for the fame; for the true Enfign of Liberty and Freedom is the Venttian Protection from those that maint ain it in Liberty.

IV. And as the Sea is capable of Protection and Go- Sea, at the end vernment, fo is the same no less than the Land subject of Mr selding

See that Plea Soveraignity of Adriatique

The fubftance

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to be divided amongst Men, and appropriated to Cities and Potentates, which long fince was Ordained of God as a thing most natural. Whence it was that Aristotle faid, That unto Maritime Cities the Sea is the Territory, because from thence they take their sustenance and defence; a thing which cannot be unless part of it might be appropriated in the like manner as the Land is, which is divided betwixt Cities and Governments, not by equal parts, or according to their greatness, but according as they are able to Rule, Govern and defend them. Berne is not the greatest City of Switzerland; yet he hath as large Territory as all the rest of the twelve Cantons put together: The Cities of Novemberg and Genoa are very rich and great, yet their Territories hardly exceed their Walls : and Venice the Mistress and Queen of the Mediterranean, was known for many years to be without any manner of possession in the firm Land.

V. Again on the Sea, certain Cities of great force, have possessed large quantities thereof; others of little force.

have been contented with the next Waters.

the Hangatique Neither are there wanting examples of fuch, notwith-Towns, at the standing they are Maritime, yet having fertile Lands lying on the back of them, have been contented therewith withferting of the Soveraignty of out ever attempting to gain any Sea Dominion; others who the Adriatique, being awed by their more mighty Neighbours, have been Interves commu- constrained to forbear any such attempt; for which two nes, uti ipfi Imperator numerat causes, a City or Republique, though it be Maritime, yet mare, & ideo it may remain without any poffession of the Sea. God hath nemo in mari Instituted Principalities for the maintenance of Justice to pifcari, aut na- the benefit of Mankind; which is necessary to be exevigare probibe- cuted as well by Sea, as by Land : Saint Paul faith, that fus inhibitentem for this cause there were due to Princes Customs and Concompetit actio tributions.

injuriaru, l.10. si quis in mare, l. injuriarum, fect. ult. de injuriis. Sin littora quoque communia sunt, l. 2. re divif. Quia accefforium funt maris, & accefforium fequitur naturam Principalis, l. 2. de peculio. legat. c. accessorium de reg. jur. in 6. Ad littus maris igitur accedere quivis potest; non piscandi tantum gratia, sed etiam edificandi & occupandi causa, l. quod in litt. de acquir. rer. Dom. l. in litt. ff. nequid in loc. pub. Jo. Angelius I. C. de repub. Hanfiat. par. 64 f. 85. Edit. Francof. Ann. Dom. 1641. But these Arguments were easily answered by the Venetian Lawyers; Quemadmodum communio littorum restringitur ad populum, à quo occupata funt, lib. 2. fect. littora D. de. quid in loc. pub. Ita etiam communio maris : adeo ut per mare à nemine occupatum navigatio sit omnino libera : per mare autem occupatum ab aliquo Principe il liberam babeant navigationem qui funt illi Principi subjecti; alii vero entenus, quatenus idem Princeps permittit. Julius Pacins de Dom. maris Adriaticie

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It would be a great abfurdity to praise the well Government and Defence of the Land, and to condemn that of the Sea: nor doth it follow because of the vastness of the Sen; that it is not possible to be governed and protected, but that proceeds from a defect in Mankind; for Deferts though part of Kingdoms, are impossible to be governed and protected, witness the many Deferts of Africk, and the immense vastities of the New World.

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VI. As it is a gift of God, that a Land by the Laws and publique Power be Ruled, protected and Governed: fo the fame happens to the Sea; and those * are deceived * Gretine mare by a gross equivocation, who averre, that the Land by rea- libram. comfon of its stability ought to be subjected, but not the scordian i quot Sea, for being an unconstant Element, no more than Air; communiter pofforasmuch as they intend by the Sea and the Air all the filetor, vitio parts of the fluid Elements, it is a most certain thing, naturali weglithat they cannot be brought under Subjection and Govern communiorerum ment, because whilst a Man serves himself with any one gerendarum difpart of them, the other escapes out of his Power; but ficultatem; Legithis chanceth also to Rivers, which cannot be detained ; pater. S. dulcife but when one is faid to Rule over a Sea or River, it is un. Jime. Lug. 2: derstood not of the Element, but of the Scite where they are placed: the Water of the Adriatique and British Seas continually runs out thereof, and yet is the same Sea, as the Tiber, Poe, Rhine, Thames or Severne, are the same Rivers they were a thousand years since; and this is that that is subject to Princes by way of Protection and Go-

Again, it would feem ridiculous if any Man would affert that the Sea ought to be left without Protection, fo fore Gallis ethat any one might do therein well or ill, robbing, spoiling, and making it unnavigable, or what soever should feem mare prater merfitting in their eyes; from all which it is apparent, that carores adit ad the Sea ought to be governed by those to whom it most pro- illos quisquam;

perly appertains by the Divine disposition.

VII. When * Julius Cesar first undertook the Invafion of this Ise, he summoned the Neighbouring Gauls to Inform him of the Shores, Ports, Havens and other things Regiones que convenient that might accelerate his intended Conquest, funt contra Gala but from them nothing could be had, they answering, lum, notum off. All Commerce and Traffique, and viliting their Ports was lib. 4. fol. 72 interdicted to all Nations before Licence had; nor could any m. a.

* Que omnia rant incognita; neque enim teneque eis ipfis quidquam preter oram maritimam atque eas

is conceived, one of the the Gauls.

fere Gallinis bostibus nostris inde sub mini-Strata auxilia Intelligebat.

Agricol.

* Gauls Town but Merchants visit the fame, and then had they places * near Yarmouth, affigued them whither they should come; nor was this Do. being then, as minion that the Britans then used, commanded without a Waval Force asthe light of which when Cafar faw, he precommon pla. ferred them before those of the Romans: for upon that occes of Mart or cafion it was that Cafer, having feen those Auxiliary Squa-Commerce for drons, which the Britans fent the Gauls in their Expeditions against the Romans, took occasion to find out that warlike Quod omnibus People, whose bare Auxiliary aid shook the Flower of the Roman Squadrons

And when the Romans became Conquerours of this Ille, the fame Right or Dominion was during all their time, Supported and maintained when they failed round their new atchieved Conquests in the time of Domitian, Agricola, giving

Tacit. in vita terrour to all the Neighbouring Nations.

But when that Mighty Empire became fubject to Fate, this Nation by the continual supply of Men, which went out of the Kingdome to fill up the Contingencies of the Roman Legions, became at last so enseebled as to render us a prey to the Saxon; which Empire when ha ving fettled Peace with their Danish Neighbours, and quieted their own home, bred quarrells; and having reduced the feveral petty Kingdoms of their Heptarchy under one Diadem, they forgot not to assume their Ancient Right and Dominion of the Seas; as did the most Noble Ed-

clementia, qui est Rex Region , Ego Edgarus Anglorum Bafileus, omniumque rerum ani que Britanniam cir-

gar, who kept no less a number than four hundred Sail of Dei largi-flua Ships to vindicate and ascertain his Dominion, giving protection to the peaceable, and punishment to the offender: nor did his Successors Etheldred, Canutus, Edmund, and those that followed of the Danish Race, any wayes wave, relinquish or lose that Royalty, but obsequiously maintained the fame down to the Conquerour, and from him fince for fome infularum Oce- upwards of twelve hundred years in a quiet and peaceable possession.

cumjacent, cunctarumque Nationum que infra eam includuntur, Imperator & Dominus, ex Chart. fundam. Eccles. Wigor. Sir John Burroughs fol. 21. Idem quoque Edgarus 400 Naves congregavit, ex quibus omni anno post Festum Paschale 100. Naves' ad quamithet Avglia partem flatuit; sic Aftate Insulam circumnavigavit; Hyeme vero judicia in Provincia exercuit, ex Ranulph. Ceftrenf. fol. 22. J. B.

> To mention the Ancient Commissions, and exercise of this Soveraign Power, Safe-Conducts, Writs of Seizure, Arrests, Records of Grants, and Licences to pass through

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the Sea, and to fish, Parliament Rolls and the like, twould to fully promake a Volume; in a word, if Right of Prescription, Succession of inheritance, continual claim, matter of fact, confent of History, and Confessions, even from the mouths and pens pertinent in of Adversaries, be of any moment to the afferting of a this Tract to Title, his Sacred Majesty may be prefumed to have as rehearse the good a Title to that, as the most absolute Monarch this Authorities he day on Earth, hath to what ever he can claim or does enjoy.

VIII. Now the Duty of the Flagg is no more but a Epift. Hibernia confecutive acknowledging of that Right and Dominian Sylloge \$. 1213 of the British Seas, (not as a bare Honorary Salute or Geremony, but as an absolute sign of the Right and Soveraignty of those Seas where they are obliged to strike Sail) that are in him to whose Flagg they Vail, and pay that Duty to; and in fubstance is no more but that the King grants a general Licence for Ships to pass through his Seas, that are his Friends, paying that Obeyfance and Duty, like those Services when Lords grant out Estates, referving a Rose or Pepper Corn, the value of which is not regarded, but the remembrance and acknowledging their Benefactors Right

and Dominion.

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That this hath been an Ancient Custome, alwayes waiting on that Soveraignty, appears by that memorable Retord upwards of four hundred years fince made, where it is declared by King John what the Antient Custome was, in these words; That if a Lieutenant in any Moyage, bes Inter Leges Maing Dedained by Common Councel of the Mingdom do en rinas fub fine tounter upon the Ses any Ships of Meffels, laden of uns Anno regni Reladen, that will not Strike and bail their Bonets at the gis Johannia fe-Commandment of the Lieutenant of the Ming, but will Le Ordinance fight against them of the fleet, that if they can be tae al Hastings. hen, they be reported as Enemies, and their Stips, Weltels and Goods taken and forfeited as the Goods of Enemies, although the Malters of Pollellors of the fame bould come afterwards, and alledge, that they are the Ships, Messels and Goods of those that are Friends to our Lozd the Bing, and that the Common Beople in the tame be chastifed by imprisonment of their Bodies for their Rebellion, by discretion.

Thus this Immemorial Custome was by that prudent Prince affirmed, the which hath been alwayes before, and D 2

ved by M' Selden, that it would be imvouches.

Vide Fac. UF ferius Armach.

ever fince, (without interruption by all Nations) constant ly pay'd to the Ships of War, bearing the Royal Standard and other of His Majesties Ships, wearing his Colours and Enfigns of Service; he knowing that undoubted Maxime of State, that Kingdomes are preserved by Reputation, which is as well their strongest support in Peace, as their chiefest safety in time of War, when once they grow Despised, they are either subject to Forreign Invasions, or Domestique Troubles. the which (if possible) that Prince would have prevented. but he lived when those Celestial Bodies which govern the Actions of Princes feemed to frown on the most Virtuous and Wife.

IX. And as there is no Nation in the World more tender and jealous of their Honour than the English; so none more impatiently tolerate the diminution thereof. Hence it was that in all Treaties before almost any other thing was afcertained the Dominion of the Sea, and friking the Top-

fail was alwayes first provided for.

In the Year 1653, after the Dutch had measured the length of their Swords with those of this Nation, and being fensible of the odds, and having by their four Embaffadours most humbly befought Peace, this very Duty of the Flagg was demanded by the 15th Article, in these words:

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That the Ships and Mellels of the faid United Probinces, as well Wen of Bar as others, be thep in fingle Ships, or in fleets, meeting at Dea with any of the Ships of this State of England, or in their ferbice, and wearing the flagg; thall firine the flagg, and lower their Top-fail, untill thep be passed by, and shall likewise submit themselbes to be hiffted if thereto required, and perform all other respects due to the said Common-Mealth of England, to whom the Dominion and Soberaignty of the British Seas belong.

This was fo peremptorily demanded, that without the Solemn acknowledging of the Soveraignty over the British Seas, there was no Peace to be had; that as to the acknowledging of the Soveraignty and the Flag, they were willing to continue the Ancient Custom, but that of Visiting was somewhat Le ab Atzmar hard: 'tis true the latter Clause was by the Usurper waved, for reasons standing with his private interest; but the first was made absolute, by the 13th Article between Him and

fol. 847.

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that Republique, and from thence it was transcribed to the 10th Article at White-Hall, and afterwards into the 10th Article at Breda, and from thence into the 6th Article made 1602. last at Westm. and that Clause of searching of each others Ships made reciprocate, by the sth Article made in the Marine Treaty at London; but that extends not to Ships of War, but only the Ships of Subjects.

X. By the British Seas in the Article about the Flage, are meant the Four Seas, and not the Channel only; for in the 16th Article they did express what was meant by the Britilb Seas. +

That the Inhabitants and Subjects of the United Pro- the laft Treaty binces may with their Ships and Meffels furnified as Dominion is werchant wen, freely ufe their Pabigation, fail, pals and afcerrained repair in the Seas of Great Britain and Ireland, and the from cape Fi-Mes within the same, commonly called the British Seas, niftere to the bitbout any wrong or injury to be offered them by the middle Point of the Land Dhips oz Beople of this Common-wealth; but on the con Van Staten in trarp (ball be treated with all Lobe and Friendly Offices, Norway, o. Feb. and map likewise with their wen of War-not erced. 1671. ing fuch a number as shall be agreed upon--- sail, pass and repats through the faid Seas, to and from the Coun- the Treaty of tries and Ports beyond them; but in case the said States 150 Nov. 1652. General stall babe occasion to pals through the faid Deas with a greater number of wen of war, they hall gibe thre Ponths potice of their intention to the Commonwealth, and obtain their confent for the passing of fuch a Fleet, for prebenting of Jealousse and misinderstanding betwirt the States by means thereof.

The first part of this Article doth plainly set out the extent of the British Seas, and that it is not the bare Channel alone that comprehends the fame, but the Four Seas, and the fame is further explained in the Great Case of Constables, + where the Dominion of the Queen (be- + Hill 29 E'. fore the Union) as to the Seas, did extend mid-way be. B. R. the Que tween England and Spain; but entirely between England and Sir Job and France; for the French never had any Right or Claim Legrand 3. to the British Seas: For in the Wars between Edward the part 72. First and Philip the Fair, (all Commerce on both sides being agreed to be free, fo that to all Merchants whatfoever, there should be inducia, which were called suffe- maris 1. 2. com rantia Guerra, and Judges on both fides were appointed 14- 27, 28.

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riam & formam sufferantia : it was contained in the first provision of that League, that they should defend each others Rights against all others; this afterwards occafioned the introducing that Judgement in the fame King time, (before those Judges, chosen by both the faid Princes, by the Proctors of the Prelates, Nobility, and High Admiral of England, and all the Cities, Towns and Subjects of England, &c. unto which were joyned the suffrages of the most Maritime Nations, as Genoa, Catalonia, Spain, Al main, Zeland, Holland, Freifland, Denmark and Norway, arm of the and divers other Subjects of the Roman Empire,) against Reginer Grimbald, then Admiral of France, for that there being Wars between Philip King of France and Guy Earl of Flanders, he had taken Merchants upon those Seas, in their Voyage to Flanders, and despoiled them of their Goods, whereas the Kings of England and their Predeces fors, (as they all joyntly do declare and affirm without all controversie beyond the memory of Man,) have had the Supream Government of the English Seas, and the Islands

Prascribendo scilicet Leges, Statuta atque interdicta armorum, naviumque alio ac Mercatoriis armamentis instructarum, caufationes exigendo, tutelam prabendo, ubicunque opus effet, at que alia constituendo quacunque fuerint necessaria ad pacem, jus & aquitatem conservandam inter omnimodas rates tam exteras quam in Imperio Anglicano comprehensas que per illud Consent of all transierint; Supremam iifdem item fuisse atque effe tatelam; merum mixtum Imperium in juredicendo secundum dictas Leges, Statuta, prascripta & interdicta, ahisque in rebus que ad sum-

mum Imperium attinent in locis adjudicatis.

By which memorable Record, it apparently flews that the Kings of England have had iftud regimen & dominium 4. Inflit. 142. exclusive of the King of France bordering upon the fame Selden cap. 27. Seas, and of all other Kings and Princes whatloever : and Mare claufum. it was there adjudged that Grimbalds Patent was an ufurpa-

Sir John Bur- tion on the King of England's Dominion, and he adjudged roughs fol. 42. to make fatisfaction, or if he proved unable, then the King his Master should, and that after satisfaction he rendred to punishment.

> And as to the fecond part of the Articles of giving notice,

cooke 4. Inst. Jel. 142.

A Universal Nations.

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tice, it was but an Act of common prudence, their late . unexpected wifit which they then gave, put the English to some furprise; but they facing the Batavian, foon made them know that they were as capable of beating them home, as they were then daring in coming out, and were not to be braved out of a Dominion and Right, which their Ancefors had with fo much Glory acquired and afferted.

XI. By the Article of the Offensive and Defensive League Anno 1834. between France and the United Provinces, it was agreed, That if at any time the Dutch Fleet (which were to Leo ab Airsms Scoure the French Coufts in the Mediterranean from Pirats) Hift. Traff. pas should at any time meet the French, the Admiral of the sia Bilgi- page Durch was to frike his Flag and lower his Top Sail at his first duni Bataver. approach to the French Fleet, and to falute the Admiral quarto 1654. of France with Guns, who was to return the faid falute by Guns also, as was usual when the Dutch and English Fleet did meet.

Only in this the Right of the Flagg of England differs from that claimed by the French; for if there had been a the said had failer on the part of the Durch, of paying that respect to the French, the same would have amounted to no more but and of the a breach of the Lougue :- but the not striking to the King of England's Flage, is open Rebellion; and the Article does fo fignifie, for it is there mentioned as a Right and Soveraigney, not a bare Dominion only, like that of ferufalem to

the King of Spain. - XIL The Duty of the Flage that hath been fo constantly pay'd to our Ancestors, is of such advantage to the continuing the Renown of this Nation, that it serveth to imprint new Reverence in Forreigners that render it, and adds new Courage to those of our Sea Men that exact it; and fince we know how much it imports a State that it be Reverenced abroad, and that Repute is the principal support of any Government, it equally influenceth the Subjects at Home and Forreign Allies abroad: And as there is no Nation in the World more tender of their Honour than the English, fo none more impatiently tolerate the diminution thereof. With what refentments would not only the more Generous and Noble, but even the Popular and Vulgar Sea Men detest this, or any succeeding Age, should they remit or lose that Regality; those Acknowledgements which their Predecessors with so much Glory afferted, and the neglect whereof

177. Edit. Lug.

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dignity of fuch an Action being sufficient to instante the whole Kingdom, the consideration of which, besides His Sacred Majesties own Royal inclination to the same, and his evident Testimonies never to abandon a Ceremony of so high a concernment; witness the exposing the one half of his own heart, his Royal Highness, in the asserting the same, with such same of his own heart, his Royal Highness, that no Age or Time can shew a memorial of the like, are Causes sufficient to create in us new slames of Loye to those Royal Patriots, and Usages, each other sphear, and act by other Rules than Soveraign Powers; the regard of Credit with them, may oftentimes yield

on such an accontre legally rolerated. In omnibus rebus vetustas ipsa plurimum babet dignitații: Ita ut
Massalienses quorum prastantissima creditur suisse Respublica, laudentur eo nomine quod gladio ad puniendos sontes us sint eodem d condita Urbs, quo indicarent in minimis quoque rebus antiqua consuctudinis momenta servanda. Proxime enim ad demum accedit Antiquitas,

eternitatis quadam imagine. Grot. de Antiq. Rep. Batav. in Przfat.

+ vid. the Earl to those of Utility, or other motives; the Publique receives of Shaftsbury's little injury thereby, nor is their Wisdom questioned for Speech to the fuch puntilio's, if they relinquish them for other emoly, Parliament, ments or Peace fake; but Soveraigns cannot fo transact, 1672. Cateris morta- their Subjects the People participate in their Honour and libus in to flare Indignities; they have a Property, a direct Right in the former †: Soveraigns cannot alienate or fuffer their Honours confilia, quid Got conducere to be impaired, because it is not really theirs, it appertains putent : Princito the Nation univerfally, and they are all effectually injupium diversam effe fortem, qui- red by fuch transactions, either because the indignity doth bus pracipuare- really extend to them, or because the Government and Aurum ad summan thorsty is thereupon weakned and prejudiced, which is the dirigenda. Ta- greatest of Civil detriments that can befall a People, though citus Annal.l.A. Si fama the ordinarily they are not aware thereof.

videtur neceffaria, rectam muneris tui administrationem non potest condonare. Leffins de

Inft. l. 2. C. 11. dub. 24. 5. 26.

As Prudence doth thus distinguish betwixt the demeanor of Private and Publique Persons, so doth Charity it self; for though the Gospel precepts do oblige particular Persons to bear injuries and contumelies with patience, and to surrender even the Coat as well as the Cloak; yet is not this so to be construed, as if even Private Christians were to yield up their Civil Rights to every insolent that would incroach upon, and usurp them, or that they were

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to derive themselves of those Reparations, which the Law and Government affords them; neither is it so to be understood as if the Givil Magistrate in Christendom might not secure himself of that obedience and reverence, which is due unto Dignity, but bear the Sword in vain.

XIII. This being the value which this Nation did alwaves place upon the Right of the Flage, the which they never did regard only as a Givility and Reflect, but as a principal Testimony of the unquestionable Right of this Nation to the Dominion and Superiority of the adjacent Seas, acknowledged generally by all the Neighbour States and Princes of Europe, and must be pay'd and acknowledged by all Princes in the World, that shall be or pass on the same,

The Maritime Dominion by the Laws of England were alwayes accounted the Four Seas, fuch as are born thereon, are not Aliens, and to be within them is to be within the

Legeance of the King and Realm of England.

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The Records in the dayes of Edward the 3d, and Henry the sth proclaim it, that those Kings and their Progenitors had eyer been Lords of the Seas: and amongst those many great Instances of proving the Soveraignty of the fame, is that famous Record of Edward the first, and Philip the Fair of France, in which the Procurators of most Nations Bordering upon the Sea throughout Europe, as the Genoeses, Catalonians, Almaines, Zelanders, Hollanders, Freislanders, Danes and Norwegians, besides others under the Dominion of the Roman German Empire, do all joyntly declare, That the Bings of England, by Right of the faid kingdom from time to time, whereof there is no memozial to the contrarp, babe been in peaceable polleffion of the Soberaign Lozoship of the Seas of England, and of the Mes within the fame, with power of making and eliadisping Laws, Statutes and Probibitions of Arms, and of bips otherwise furnished than Werchant Wen use to be, and of taking furety, and affording fafe-guard in all Cales where need thall require, and of ordering all things necessary for the maintaining of Peace, Kight and Equi- Vide par of ty among all manner of People, as well of other Domi. the Record in nions, as their own passing through the faid Seas, and fel. 54 the Soberaign Buard thereof.

By which it plainly appears, That the King of England had then been in peaceable possession of the said Dominion.

Claufum L. 2. cap. 24. Fitz-berberts Protest. tit. 46. Seld. ibidem cap. 23.

Co. 4. Inflit

fol. 142.

Selden Mars

And the Cafe 29 Eliz. in B.R. Opinion there possession of theshores; for the Sea and

Land make di-

by immemorial prescription, that the Soveraignty belongeth unto them, not because they were Domini utriusque ripa,) when they had both England and Normandy, and were Lords of both shores; (for Edward the first at that time had not Normandy) but that it is inseparably appendant and Sir John con- annexed to the Kingdom of England, our Kings being Su-Rables, Leonard periour Lords of the faid Seas, by reason (as the very Record 3. part 72, the mentions) of the faid Kingdom, and fince that the Sovereason of the raignty of the Sea did alwayes appertain unto the English is miltaken: for King, not in any other Right than that of the Kingdom of Enthe right unto gland; no Prince or Republique ought or can doubt the the Sea ariseth Title by which our present Claim is deduced; 'tis in Right not from the of Britannia, that the same is challenged, 'twas in that Right the Romans held it : the Claim justified Ed. 3. and his Role Noble; though there are other reasons regarding to

flind Territories, and by the Laws of England the Land is called the Realm, but the Sea the Dominion; and as the loss of one Province doth not infer that the Prince must refign up the reft; fo the loss of the Land Territory doth not by concomitancy argue the loss of the adjacent Seas. It is no more necessary that every Sea Town should command one hundred miles at Sea, than that each City should command one hundred

miles by Land. Julius Paucius de Dom. maris Adriatici.

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Will. Fulbecks Law of Nations, c. 4. The King a-

Byron, Bridg-25.

the Port-cullis in the Royal Banners of England; yet as in reference to the Miritime Dominion Hen. 8th did embellish his Navy Royal therewith, and Queen Elizab. Stamped it upon Anno Domini those Dollars which she designed for the East India Trade, fignifying her Power of shutting up the Seas, if she thought fit (as by a Port-cullis) with the Navy Royal; this Dominion of the British Seas did Authenticate the Proclamation of Anno Domini King James, ordaining the Flemish at Lond. and Edenborough to take Licence to Fish, this justified the like Proclamation Anno Domini by the late Royal Martyr King Charles, and warranted by the Earl of Northumberland in his Naval Expedition.

the Lancastrian Line, which yield a Colour for the use of

That Prescription is valid against the Claims of Soveraign Pandeets of the Princes cannot be deny'd by any who regard the Haly Scripture, reason, the practice and tranquillity of the World; and that true it is, the modern Dutch have pretended, gainst Sir John if not dared, to challenge the Freedom to Fish in the British Seas, by Prescription; but it is likewise as true that Preman, fo. 23,24, feription depends not upon the Corporeal but the Civil polfession, and that is retained if Claim be but made so often

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as to barr the Prescription, the which hath been alwayes made evident, first by frequent Medals, next by punishing those that refused it as Rebels, by guarding of it; and lastly by giving Laws time out of mind on it, which evidently proves that the Civil possession is not relinquished. and our Kings conftantly claiming the Dominion of the fame, none else pretending, all Nations acknowledging it to be in them, and the same never questioned, till those

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modern Durch (of yesterday) arose. XIV. The importance of the Dominion of the Sea unto this Nation, is very great, for alone on that depends our Security, our Wealth, our Glory; from hence it is that England hath a Right to all those advantages and emoluments, which the Venetian Republique draws from the Adriatique Sea, where the Ships of the Grand Seignior, of the Emperour, King of Spain, and Pope, pay Customs, to maintain those Fleets, which give Laws to them within the Gulfe; 'tis hereby that the English can shut up or open these Seas for Ships or Fleets to pass or repass them; whereto Queen Elizabeth had fo special a regard, that when the King of Denmark and the Hanfiatique Towns follicited Her Majesty to permit them free passage, they transporting Corn into Spain, the refused them; and when a Protestant Fleet of Hamburgers and others, had prefumed to do fo notwithflanding her pro- Chap of Cahibition, the caufed her Navy Royal to ferze, take, burn flowes. and fpoil them, when they were passed her Maritime Ter- Jane 30-1000 ritory, within fight of Lisbon; yielding this reason for her Justification, that they not only relieved her Enemy with Provisions, but had prefumptuoutly made use of her Beas. without obtaining ber Moyal Permiffion for to being : Tis from hence that the Crown of England can justly demand an account of any Ship or Ships occurring in those Seas, what's their Bufiness, and what their intentions are; and prohibit any Prince or Republique, to enter there with potent Fleets, without preacquainting his Majesty, and obtaining his Royal Permission; without which Dominion and Soveraignty, England can never live fecure on thore, it being easie for any Forreign Fleets to amuse us with specious pretences, and in their passage to invade and furprife us : Thus whillt the Turk pretended to fail for Malta, he occasionally possessed himself of Ca-

Wide poftra in 1598

649. II.

mea, in the life of Candia; many fuch prefidents do occur Belder like I. in History : And in fear of fuch furprizal, the Athenians (being Lords at Sea) did exclude the Persian Monarchs from fending any Ships of War into any part of the A. gean Sea, Rhodian, Carpathian and Lydian Seas, and that which tends to the West, towards Athens; the like caution was used by the Romans against Antiochus and the Carthagistians; and the Turk prohibits all Nations, saving his Vallals, to enter the Black Sea, or Pontus Euxinus, Alber. Gentil. and also the Red Sea; and that 'tis by virtue and force Hift. Advocat. of this Right that the British Nation can drive on their own Commerce, navigate themselves, and permit others

fecurely to Trade with them: 'Tis true that the Dutch

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1. 1. c. 14. Vide Mr Secretary Cookes Letter to Sir william have prefumed some years since, to Violate the Security nofwell, April of the British Seas, by the attacking the Allies of Eng. 16. 163¢.

the Spanish juftitiam omnem-pro certo: Wittiam que ritoriis debetur alienis. Alb. Gent. Hifb. Ad-

land, not only within the British Seas, but in her Harbours, attempting to purfue a French Vessel up almost to *The fight of London; and have more than once * attacqued the Spanish the Dutch with Fleets in her Ports, under the protection of her Caltles, and that against the Laws of Nations, and the Peace of Fleet, in the Ports, in which for the time they seemed to cloud the Sciliet hoe fa- Honour of the Nation, but fatisfaction for Indignities of tum Hollando- that nature, though flow, yet are fure, and should fuch rum est contra as those have been longer tolerated, Beloved Britannia must become a prostitute, by a Confederation of those & centre were States, or take Passports for their Commerce : But the Royal Martyr's goodness was no longer to be trod on, His partibus de ter- Heart and his Cause were good, and though those unhappy times (which were crooked to whatfoever feem'd ftraight) did hinder the accomplishment of his entire intention for vocat.l. 1.c.14. Jatisfaction; yet those whom the Just God of Heaven was pleased for a time to permit as a punishment to this Nation to Rule, did not want in the fulfilling; for fo foon as he was pleased to stay the fury of the Intestine Sword, their hearts took fire from that flame that had formerly been kindled in that Royal Breast, and having prepared a Fleet, in order to the treating as Souldiers with Swords Anno Domini in their hands, they were in the like manner affaulted in their Territories in the Downes; (but the Durch found then what it was (though two for one) to affault a British Lion at the mouth of his Den,) intending, if possible, to have destroyed the English Power, but were frustrated in their

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their delign, being severely beaten home to their own doors; and afterwards those that then had got the English Sword in their hands, begun to consider that the Victory must be pursued, as a season fit to assert their Ansient Right and Soveraignty of the Sea, and then those People thinking that the odds before was not enough to destroy the British Fleet, they equipt out a Fleet greater and far more numerous than the English, under the Admirals Van Trump, De Witt, the two Evertsons, and Ruyter; but they fuffered the same Fate as their former, about some thirty four of their Ships on the Coast of Flanders, burnt and taken, and the rest chased home to their Ports; and not long after followed the total defeat of their Naval Forces, accompanied with the death of Van Trump by the English, under the Admirals Blake and Monk, who had funk and fired about thirty more of their Ships of War (no quarter being given till the end of the Battel) fix Captains, and about a thoufand Men were taken prisoners, and about six thousand flain. Of their Presumptions since (amongst other things) in denying the Duty of the Flage, and of what punishment and check they have had for the same, to what condition they have been reduced and made to acknowledge that Dominion and Superiority to that Crown (under which Queen Eliza their Ancestors humbly + befought the acceptance of the contern more Soveraignty of the Netherlands, might be annexed and protected) is now fresh in our memories : so high and of so great Importance is this Dominion and Soveraignty signified alt, Que la com-by the Duty of the Flagg in the British circumfacent Seas. junction desdite

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About the 8 of Aug. 1652

+ Offered to autres merite bien une confideration feci-Pays de Hol-

lande, Zelande, Frize, & des Villes de l'Efcluz, & Oftende in Flandres, avec les Royannes de voftre Majefte, emporte & foit l'Empire de la Grande Mer Oceane; & par confequent une afseurance & Felicité perpetuelle pour les Subjetts de vostre Serenissime Majesté. John Stone Supplement to Holling bed. Anno Dom. 1585. Vide Sir Walter Raleigh, lik. 4. cap. 21 5. 2. and 3.

CHAP. VI.

Of the Right of Prelling or Seizing of Ships or Bariners, for Serbice Publique.

Law of Dominion.

II. Whether the Ships of Nations who are in War at the same time may be pressed, the danger being

III. Whether this Right extends to Ships to fight, and no more, or gives a power to Trade.

IV. By the Laws of England the King may feize.

V. The reason why such Power was vested in the Admiral.

1. That such Right is excepted in the VI. That such a Right of compelling Men to ferve in Naval Expeditions may be.

VII. Objections legal refuted. VIII. Of the Ancient punishment

of fuch deserters of the Kings fervice.

IX. Whether it be lawful for a private Man to execute Juftice on Such as fly and defert the fervice.

X. Where a General Commiffion it given to Men to execute fu-

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the Law of Nature forbids, nor forbid what it commands; nevertheless it may circumscribe Natural Liberty, and prohibit what was naturally lawful: and alfo by its force antevert that very Dominion, which is naturally to be acquired : Hence it is, that Princes by the Law of Nations may acquire a Right of use, of things that do belong to private Perfons, for Property hath not (as hath been faid) swallow'd up all that Right, which rose from the Common State of things; for as all Laws are to be construed as near as possible to the intention of the Makers, fo we must consider what was the mind Enna, aut ma- of those that first introduced singular Dominions; now to aut necessa- the Rule to construe that, must be as near as possible to rio facinore re- Natural Equity, and that in extream necessity that old Right of using things should revive as if the things had remained common, the fame flanding with the interest of all Humane Constitutions; and therefore in the Law of * F. de Navi- Dominion extream necessity feems excepted : Hence it is, bus non excus, that the Vessels and Ships of what Nature or Nation soever c. l. 11. tit. 3. * that shall be found riding in the Port or Havens of any and Pekins on Prince or State, may be feized on, and imploy'd upon any fervice

I. THe Civil Law, though it can command nothing which

tenta. Livy Ab. 24.

fervice of that Soveraign that shall seize, the same being but a harmless utility not divesting the Owners of their in-

terest or property.

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II. If a Ship of the King of Denmark be in the Port of London, and the Swede is in War with that Prince; and it happens at that time the King of Britain is in War with the Spaniard, now the Pollellor is here pressed with an equal necessity, and by the same argument is rather obliged to the defence of his own Country than another, whether by the Law of Nations the Ship ought to be detained, hath been doubted; most certain they may: who would not (inquit cicere) pluck a Shipwrackt Man from his plank, or a wounded Man from his Horse, rather than suffer himself to perish? to flight which is a fin, and to preferve the highest of wifdom; besides in the taking of the Vessel the Right is not que sunt accipitaken from the Owner, but only the use, which when the entiutilia, dannecessity is over, there is a condition of restoring annexed tacitly to fuch a feizure.

* And doubtless the same right remains to seize the Ships of War of any Nations, as well as those of Private interest, tion cyri. the which may be imploy'd as occasion shall be present: So the Grecians feized on Ships of all Nations that were in Ports, by the advice of Xenophon; but in the time provided

food and wages to the Mariners.

III. Whether this Right extends fo far as to give Princes a Power to feize in order to Traffique, may be some question; certainly if the Traffique be for such commodities as Masts, Timber, Tar, Powder, Shot, or other Commodi- 10 Ed. m. 164 ties or Accoutrements of Armes, or Naval Provisions of 12. Offence necessary for the Defence of the Realm, it may be done (but then it is just, fraight * should be pay'd) for what hurt can it do me to let another my Boat to pass over a Rot. 77. in the Ford, if he rewards me? And if that be answered, the Owners are at no prejudice, for this is but a harmless ntility.

IV. By the Lawes of England there is no question, but Black Book of the King may feize, and it appears by very many Ancient the Admiralry Records, that he might do it; and it was one of the Arti p. 26 and 27. cles of Enquiry amongst others, Item, foit in quis de Reifs 6 Job. m. 11. qui tont arreffes pour le serbice du Mop ou de 1' Admi- 9 fob. m. 3tal. e debreiffant le Arreft, then follows, Dedonne effoit 17. 11 R. 2. m. en temps du Mop Richard le primier a Grimsby per adbite 13. Rot. Frang.

Quidni enim quando fine detrimento suo poteft, alteri communicet, in iis ti non molesta. I. de Offic. I.

* De Expedi-

Exchequer.

12 E. 2. in the

de pluffeurs Deigneurs du Koyaume, que quand Beils te rout arreftes, ec. and that upon fuch Arrefts broken, the

parties might be punished and fined.

De Offic. Admiral. Anglia per Roughton Artic. 10.

Again, Inquiratur fi arrestant, ad ferviendum Regi fregis arreftum, bu ufmodi transgreffor ftat in gratia Regia five Admiralli sui utrum voluerint committere Carceribus mancipana dum vel finem facere, in hac parte si arrestum bujusmodi factum manifestum fuerit cognitum.

If the Admiral by the Kings Command arrests any Ships for the Kings Service, and he or his Lieutenant return and certifie the Arrest or a List of the Ships arrested, into Chancery, no Master or Owner of the Ships so arrested shall be 61. 28, 29, and received to plead against the return, pur ceo que l'Somirat

a fon Lieutenant font de Mecozdi

The Black-Book of the Almiralty. 157, ISB. 15 R. 2. 6. 3.

And if the Ship so arrested, break the arrest, and the Master or Owner thereof be indicted and convicted behant l'Admiral, by the Oath of twelve Men, the Ship shall be confiscate to the King, which power the General maintains tre. Are. of in all places where he has power, and the fame feems to be provided for in the latter Clause of 1 g R. 2. Ca. 3.

Hampdens Cafe called the Ship money C. fol. 79 to 100.

King Othelred, his Bishops and Nobles in the General Councel of Enham An. 1009, for the fetting out a Fleet every year; and the punishment of those who hurt or fpoiled any Ship, or deferted the Service, especially if the King was present in the Expedition; amongst others it was Enacted, Si quis Navem in Reipub. expeditionem designatam vitiaverit, damnum integre restituito & Pacem Regis violatam compensato; si verum ita prorsus corruperit, ut deinceps nibili habeatur, plenam luito injuriam & lasam praterea Majestatem, fo Sir Henry Spelman's Version out of the Saxon Copy renders it, but the Ancient Copy hath it more

Spelmanni Concil. Tom. fol. \$20, \$21.

largely.

Spelmanni fol. 528. expepitio Navalis.

Naves per singulos Annos ob Patria defensionem & munitionem praparentur, postque Sacrofanctum Pascha cum cunctis. utensilibus competentibus simul congregentur; qua igitar etiam pæna digni sunt, qui Navium detrimentum in aliquibus perficiunt, notum esse cupimus. Quicunque aliquam ex Navibus per quampiam inertiam vel incuriam, vel negligentiam corruperit; & tamen recuperabilis sit; is Navis corruptelam vel fracturam ejusdem per solidam prius recuperet, Regique deinde, eaque pro ejuldem munitionis fractura, sibimet pertinent. rite perfolum.

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Most certain it is, that the Kings of England, have in all Ages by their Writs and Patents, commanded not only the Admiral, but the Wardens of the Cinque Ports and others, to arrest and provide Ships of War and other Vessels. and impress and provide Masters of Ships, Sea-men, Mariners, and all other necessary Tackle, Armes and Provi- E. 3. m. 2. to fions for Ships, for the defence of the Sea and the Realm 17. and then against forreign Enemies, or for transporting of Armies don, to 28. paying their freight (if not bound there by tenure) as well as to elect and provide all forts of Souldiers, Carpenters, and other Officers to be affiftants in their feveral Expeditions.

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But Fishermen or Mariners pressed for the Service, are i Eliz. cap. 12. not to be imploy'd as Souldiers, but only as Mariners; un- Vide Stat. 16. less it be in cases of great necessity, or bound thereunto, 17 car. 1. 6.15

by Tenure, Custom or Covenant.

And Water-men that shall withdraw themselves in time 2 and 2 P. & of prelling, shall suffer a fortnights imprisonment, and be M. C. 16:

prohibited to row on the Thames.

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V. The reason why the Admirals had such power given them, was, because they being sometimes called Capitanti, and Gubernatores Flotarum; they had their ordering and Governing of the Ships of War, and the raising and fitting up such Ships for the Navies, as they thought fit; other times called Custodes Maritimarum partium, their duty being to provide all Naval Provisions, as well to supply the Kings Navies occasions, as to gratifie another of the Kings Friends when diftress should constrain them to touch in his Ports, that his Subjects might receive the like retaliation : again, they were called Capitanei N aut arum. & Marinellorum; as in reference for the deciding all Spelmans Gloss. differences amongst those in the Kings Service, and pu- in tit. Admir. nishing of fuch as transgressed; and as the place was great, cheioa tit. Adto the Power was large, especially in all things belonging miral fol. 41 to the Navy-Royal, in which they had the Supream Rule and Government in all things belonging to it. He fate formerly in the Kings House, and there kept his Court, as the French Admirals do at this day at the Marble-Table; in the Kings House at Paris:

It is lawful for every Man to addict and yield up himfelf to whom he pleafeth, as appears both out of the Hebrew

Vid. Sir Henry

Inst. de Jure autem. Gell. l. 2. C. 7.

Exodus 21. 6. Hebrew Law and Roman Law; why then may not any peo ple being at their own dispose, give up themselves to their person. S. servi Prince or Soveraign; so as to transfer the Right of commanding their Aid and Help, as often as need shall require (it is not here inquired what may be prefumed in a doubtful Case, but what may be done in point of Right,) most certain such a Power may well be done, and that grounded on great Reason: First, if the Common-wealth should happen to be invaded by such a one as feeks not only the subversion of the Government but the destruction of the People, and they can find no other way to preferve themselves, but that the Supream Power should be vested with such a Prerogative, as to inforce or press the Inhabitants to serve in Armes in the defence of the fame. and the contempt of which to punish, or if they should be opprest with want, and that supplies of Provisions can no wayes be had, but by compelling another by force to exhibite the common offices of humanity to a Nation in whose Territories a Famine rages, that the Inhabitants fhould on fuch extraordinary occasions be compelled by force to ferve in Armes.

And this Dominion may be obtained feveral wayes, either by a voluntary refignation to a Conquerour, as they of Capua to the Romans, Our Land, the Temples of our Gods, all Divine and Humane things, we yield up into your hands, O ye Conscript Fathers: Again, Freedom may be granted to all by a Conquerour, except Mariners, which should in cases of necessity be excepted, or that some Prince, who will not fuffer any Mariner to go out of his Dominions, without subjecting themselves to such a reasonable command, and the Majority of Nations on fuch grounds, may abdicate from a part of them the entire Freedom of that member.

Tacitus.

Nor are there Examples of this kind wanting; the Germans are every one Master of his own house, but are almost on every occasion subject to their Lords, especially in their Goods. The Irish Corsherers, which were

co. 3. Inflit. reprehendinations when the Chief Lord, and his Retinue came to his Tenants House, and fed upon their Provifol. 358. fions till they were fpent, all being folely at their devotion: And as to the Sea, the King of Britain may at

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this day restrain Merchants or Mariners to pass out of the Realm, without Licence; and the various tenures that are introduced, which is prefumed were fince the Conquest, were no other but the Will of the Conquerour, for the Right is not measured by the excellency of this or that form, but

by the Will.

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VII. And though it hath been conceived by fome. that the King cannot press Men to serve in his Wars, giving their Reason, that of old he was to be served, either by those that held by Tenure, those that covenanted by Indenture to provide Men, or those who contracted with the Kings Officers for wages, and entered into pay, or those that were in Prison for the Kings debts; but that only extended to those Wars that were by Land : Not fol, 71. one word in all those Acts, or Mr Rolls, that any waves mention the least of Mariners; and yet what vast Fleets were in those dayes: but on the other hand, it hath been alwayes accustomed to press such fort of Men for the Naval Expeditions. The Ancient Records that which promention fuch Persons subject to press by Law, is that of vides punish-49 E. 3. commonly called + The Inquificion of Queenbo. ment for those rough, wherein it was expresly in charge amongst others, to inquire of those Mariners that were pressed for the hide them-Kings Service, and defertted the fame : So likewise by selves does evithose other Articles Translated by Roughton, it is express dence what the in Charge to the Jury, to present those that being prest to ferve, brake the Kings Arrest, in order to their punishment; and in those dayes it was esteem'd an high offence: fing, which And the Oath which the Jury then took being impanelled, certainly would was this:

This here fee mp Lozd the Admiral, that I Jonathan Nash thall well and truly enquire for our Lozd the press. king, and well and frulg at this time then ferbe at this Court of th' Admiralty, present at moch, as I habe ac- 49 E. 3. in the. knowlecke, or map babe by information of enp of mp fellows, of all mane Articles of Circumstances that touchen the Court of the Admirate and Law of the Sea, the and fol. 69. Arts which shall be grate to me at this time ; and I there io. upon fwozne oz charged, and of all other that may renew in my minde, and in Hall for nothing lette, that fe for to lay, for Franctice, Lordhip, hinreden, Alfance, Friend

2 E. 1. Memb. 18. Rot. Pat-2 E. 1. m. 17. Ro. fin. 21 E. 1. num. 44. Ro. Pat. 17 H. 6. Ro. Clauf. in dorf. Vide the Case of Bates in Lanes Reports, fol. A.

Co. 6. Part. Case of Souldier. Vide the first Institutes

And the Star? Water-men which shall Common Law was as to the Right of Prefnever punish those whom they could not

+ 2. Aprilis Black-Book of the Admiralty 32,33, 34. Art.

The Black-Book of the Admir. fol. 17.

fbip, Lobe, Batred, Enbre, Enemitee, for dred of loft of Goodnee, for none other cafe that I fall foe doe, the Kings Counceils, my fellows, mine owne, will and truly bele what oute fraude or malengen, to God me held at the bolpdome, and by this Book.

Lamb. inter Lee Edovardi f. 139 13 Car. 2. cap. 9.

VIII. And as the enquiry was strict, so was the punishment very great : Item, qui sugiet à Domino vel Socio suo pro timiditate belli, vel mortis in conductione Heretochis sui in expeditione navali vel terrestri, perdat omne quod sum est, & suam ipsius vitam, manus mittat Dominus ad terram

quam ei antea dederat.

+ Non Tolis ducibus aliifque potentibus inque immorari bene agendi propositum, sed cuique volenti neftum est eines qua vivit Reipublicæ malis commoveri, & publicas utilitates pro suis viribus promovere. Vide Grotium l. 2.c. 20.

IX. If fuch Persons shall so defert the service, it hath nasci solet, at- been a question whether a private person under the same obedience meeting with fuch a deferter, might not put him to death; it hath been conceived that he might, and the Act is lawful, and the party that flayes him hath a & liest & ho- true Right before God, as impunity before Men: But that is to be understood partly by the words, and partly by the Letter of the Law; for if the Law gives indulgence to pailion, it takes away humane punishment, and not the fault : As in case a Husband kills an Adulterous Wife, or the Adulterer + in the act, most certain it is a provocation in the highest nature, and will justifie the flayer : But if the Law respect the danger of future Evil, by delay of punishment, it is conceived to grant Right and publique That is as to Power to a private Man; fo that he is not then in the ca-

entitle him to pacity of a private Man. clergy, and fo

it was ruled by all the Judges in B. R. M. 23 car. 2. in the Case of onespecially at Surrey Assizes before Mr Justice Twisden, who slew the Adulterer in the very act. Vide August. Civit. Dei citatum. C. quicunque, causa 23. qu. 8.

And upon that very reason Queen Elizabeth deny'd the An. 25 Eliz. Constituting of a Constable, for the Tryal of Sir Francis Co. Litt. fol.74. Drake, who struck off the Head of Doughty, in partibus transmarinis.

Code Fuftin. ceat unicuique.

X. Hence it is, that every man hath a Licence given him tit. quando li- to oppose Force against plundering and pillaging Souldiers, and the next the subsequent Law about Deserters faith, Let all Men know they have a power given them a gainst publique Robbers and Desertors that run from their Colours, and all are Ministers of revenge for the quiet of

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The Black-Book of the Admir. fol. 17.

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CHAP. VII.

Df Dominion ellablished by Creaties of Alliance equal.

I. of Treaties by intervleto of XII. Of Contribution, the difficult Princes, and where generally

things I living his him here!

II. Of Princes equal, the honour pay'd by him in possession to him that comes to the Treaty.

III. Of Treaties by Princes un-

IV. Princes where obliged to treat personally, and where not.

V. Deputies their demeanor confidered generally at Treaties.

VI. Of the nature of Treaties generally, and their ends; and where they determine by the death or difpossession of a Prince, and where not.

VII. Of Treaties in reference to matters particular, and of the nature of Leagues Offensive, and to what end.

VIII. Of the causes ordinary procuring fuch Leagues.

IX. Of Leagues tending to the procuring of general Peace and Warranty.

X. Of Leagues Defensive, and of their end; together with considerations on the Persons with whom they are made.

XI. Of accidents not provided for in the League how far in honour to be

comply'd with.

ty in regulating the same to the fatisfaction of the parties interelled.

XIII. Of Leagues concluded by Deputies, and of the Ratifying the Same.

XIV. Of the causes extraordinary that tend to the breach of Leagues.

XV. Of the causes ordinary that give occasion for rupture of the Same, and from whence they proceed.

XVI. Of the Obligations on Confederates as in reference to mutual Succours.

XVII. Of Aide granted to parand Common Allies, ticulars when invaded by another Ally; and of protection granted when a People are oppreffed, whether Aide to such may fland with the League.

XVIII. Whether the Oath taken for the performance of such a League is personal, or binds the Successour, and the general Rule in construing of the same.

XIX. Of Leagues made with Princes, though driven out of their Countrey when the same are good.

Reaties are acted either by the interview of Princes, or by Persons sufficiently Commissionate for that purpose.

Those that are by interview, have been often disapproved, though often practifed; but that depends ra-

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ther of the Estate of affairs, and the conformity and diversity of Honours, and manner of living of the Princes ken by his Faand their People, than of the interview: that of Lewis the 11th, with Duke Charles of Burglandy, and of the livered to the fame King with Edward the 4th of England, past fairly, and Romans; charin all fuch Treaties they govern themselves as in reference les the 7th of to their supplies, according to the confidence which they France, at a repose in each other.

Places Neuter belonging * to fome Common Friend, or of orleans flew fome Frontier or Islands, are generally appointed for the the Duke, fame, together with what numbers or forces they are to be though a Sove-

accompanied.

II. But if of two Princes, the one goes home unto the other, he is bound to do him the honour of his lib. 4. c. 9, 10.

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And if the Prince be inferiour unto him, he commonly tween Edward fends forth fome of the Principal Officers of his Court to Lewis the 11th receive him; but if he be his equal in Quality, as being in the Territoboth Kings, although there be some debate betwixt him ries of the for precedence if he comes first to the Place where the Duke of Bur-Treaty is to be made, he must go in person, and not by gundy.

In the interview that was between Lewis the 12th and Ferdinand of Arragon at Savona; (which then be- us Paulus in longed unto the French King) Lewis the 12th, at the the History of approach of Ferdinand's Gally (before he could land) entered into it, accompanied only with his Guard, to testifie his confidence, and thereby to affure King Ferdinand of that which he had promifed he should find in the Duke of orhim; and at their going to Land, King Lewis left the leans, after-Right hand to Ferdinand, who lodged in the Castle, as the most Honourable place, and himself went to the Bi-(hoprick,

III, By the Laws of Treaties, when two Princes un the 8th. equal in Quality partly, the inferiour is to come first to the

place of congress there, to attend the Greater.

IV. Ambaffadors having received Orders to Treat the Prince to whom fuch are fent, are not by the Lawes of Treaties bound to treat perfonally, but only to depute fome of his Council for that effect; the reason is, for that the dignity of a Prince may receive fome detriment,

Jugartha tather in Law Bacchus, & depersonal Treaty with Duke raign Prince. Meyer l. 15.

Phil. Comines * As that bethe 4th and

Vide Amili-France 3 and Ferron his fupply of the same of the Life of wards Lewis 12th upon the failer of Islue Male of charles

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which cannot be maintained amidft the contestations which

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happen in Conferences.

But if an Ambassadour be deputed as Lieutenant to a Prince, there indeed fuch Commissioner is not bound to treat, but only with the Prince himself: and so it was where the Bishop of Gurgia, who was deputed by the Em-Julius Ferretus de legatis Prinperour to Pope Julio the Second; the Pope Commissionated three Cardinals to treat with him, but the Bishop having notice in what quality he was like to be received, Commissionated three Gentlemen to Confer with them, excufing himself upon other affairs, which afterwards was explained, that he came not as a fingle Ambassadour, but as a Lieutenant to the Emperour, to the which Quality he had been received at Rome by the Pope.

> V. The Deputies being affembled, their Seats are confiderable, they having no Power to quit any thing of the Rank, which their Masters ought to hold, and by the Lawes of Treaties, the first place is at the head or end of the Table, (if there be one) the second is the first on the right hand, and the third is, the first on the left hand of him that is at the end : and if there be many Deputies to one Prince, they usually sit at one side, to have the more facility to confer together, if it be

needfull.

VI. Treaties which are made with our Neighbours as Friends, are called Treaties of Alliances, Equal or Unequal: The Equal is either of fingle Friendship only, for the entertainment of Traffique, or for Aid and Succour; that of Succour is for the Defensive or Offensive, and sometimes for both, with or against all Men, or against fome certain Princes and Republiques, and there + Alliances are contracted, cither from Estate to Estate, and for the Kings, Realm preservation of the Estates of each other (in which cafe by the death of the Prince they may not be interrupted;) or elfe they are contracted betwixt Prince and Prince, and then the death of one suspends till a new Treaty hath confirmed it, unless there is a time been lookt up- certain prescribed by the Treaty, to the which the Alliance must continue after the death of the Prince; or else they are made from an Estate and Prince, where the death of the Prince does likewife, if not dissolve, yet at leaft

t The Leagues between the Crown of France and Spain, are commonly between Kings and and Realm, and Man and Man of their Subjects, and hath in time past on to be the firm ft of Alliances. Phil.

Comires ib. 2. cap. 8.

least suspend till a new Treaty of Confirmation of the precedents, although by the Laws of England Rex non intermoritur.

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Venice, fol. 87.

The League then made

with the Scots, and likewise between Ed. 4th, and the Duke of Burgundy, Phil. Comin. lib. 3. cap. 6.

VII. Sometimes Alliances are contracted for an Enterprize, and for one effect only, in the part which the Allies are interessed, and such is generally called League; which in England have been sometimes confirmed by Act of Parliament. *

* Rot. Pat. 4 H. 5. num. 4.

Leagues commonly are Offensive, but in effect they cake 4. Instit. tend to attempt against some one, and in the bottom 156. are lodged Articles of secrecie for the Enterprise : and such cambray, the was that of Cambray against the Venetians, in which they Confederates borrowed the pretext of Religion, and the Peace of Chri- of which were Bendom.

Pope Julius the second, the Empereur, King of France, Spain and Arragon, Anno 1558. Vide History Republique of

VIII. The ordinary Caufes for which Princes and Republiques make Leagues, are either to facilitate a Conquest, as that that was made between Lewis the 12th, and Ferdinand of Arragon, for the Realm of Naples.

Or to ballance the Forces of one that is more Mighty, in hindering him that he grow not greater: but Armes ought not to be taken, to diminish such a Neighbours Power, for that fear is uncertain, but prudent Leagues ti poffe ad vim may be made in diminshing their Power.

The English made a League to succour the Hollanders, not only to ballance the growing opulency of the Spanish Monarchy, but likewise to encrease her own by the Alli-

ance of the Dutch. Quid fequitur ?

Again, Leagues may be made for the procuring of a cap. 15. 5. 17. General Peace, by way of Mediation of their Neighbours in War; and fuch was that League of Union propounded by His now Sacred Majesty, and afterwards concluded betwixt him and the States General of the United V Provinces for an efficacious Mediation of Peace between France and Spain, (His Sacred Majesty of Britain having a prospect to what afterwards happened, and of a War wherein

Sed ut vim bainferendam jus tribuat ab omni aquitate abborret. Grotius de Fure belli & pacis, lib. 2.

embrar, the League of Union between His Majesty of Britain concluded at the States General Netherlands Fanuary 13 Anno 1 6 6 8.

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wherein most inevitably the same must involve the most of the Princes in Christendom) to the effecting of which Peace. His Majesty and the States General, did obtain a promise from the French King to the Dutch, to lav down Arms, on condition the Spaniards would formally and folemnly by a Treaty of Peace, quit to him all those Places and Forts, together with the Chastellenies, and their appurtenances which they by force of Armes had taken in, or fortified in the then last years Expedition; or otherwise, that the Spaniard be brought to transferr to the French all their remainder in the Dutchy of Lux. emburg, (or in the County of Burgundy) together with Cambray and Cambresis, Donay, Ayre, St Omers, Bergu, St Avinox, Fuernes and Lynk, with the Bailywicks, Chastellenies, and all other their Dependancies, and the French King to restore to the Spaniard all Places, Territories, which they have by Armes taken fince their entrance into Flanders, on condition that the States Gene-Hague, with the ral do reciprocally undertake and fecure to the French, to prevail with the Spaniard to confent to the fame. of the United Conditions, which once effected would (as was hop't) initiate the tranquillity of, and interest not only of two Warring Crowns, but of all other the Princes of Christendom. To the effecting of which, there were several Articles agreed, and likewife it was agreed, That if a Peace should happen to be made, His Majesty and the States General should become Warrantees, and a Place left for any other Prince or State to come into the fame, and who should think it their interest to keep the Peace of Christendom undisturbed, and to restore the Low Countries to their Tranquillity, there was provision made likewise by the fame, for the Forces of each of the Warrantees to be used against those that should break and violate the fame, obliging them to cease the violence, and repair the party injured.

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But a Defenwho gave ic. cause of War.

IX. A Defensive League, which hath no other benefit five War is ur, but a necessary Defence, and in the which Mean Estates just on his p sare in a manner equally interested, last usually longer than an Offensive League, which is voluntary, and from the which either of the Confederates will easily part when he hath more interest; So as in ballancing the interest of the

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the one and the other, he that shall find himself accompanied with distroit, and an opinion to be irreconcileable to the Common Enemy, generally proves the most firm in the League.

The Wifene, Courage, Means and Constancy of the Prince or State is to be considered; so likewise of the distance of the Places, as well in regard of those with whom they unite, as of those against whom they make

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Leagues having no other limitation, but the end of the Enterprise for which they were made, have admitted nis after restimany large debates in Cases of Accident : For instance, if an Enemy shall take the Countrey, for the Defence where- and the author of the League was made, the Question has been whether of the breach the Confederates be bound to affift him, who hath loft yielded up exif in the Recovery; some have held, that the Defensive piatum (faith did not extend to far : notwithstanding if there were no quid ex fadere Treaty, which had concerned this Conquest, yet it would rupto irarum feem more reasonable to comprehend the Recovery in in nos calestithe Defensive, if it be general. For as it hath for its um suit. Satisfied to preserve the Allie on his State, and that to at que diss cordifian unto it, the Forces mult not only remain in the fuit subigi nos Countrey of the Allie to attend the Enemy, but after ad necessitatem denunciation and other acts of hostility done by the Ene. cedendi res, iis my, they must enter into his Countrey, to the end to pre- non fuife corwent him or divert him from attempting any thing against a Romanis forthe Allie . The Offensive being judged by the aggression, deris expiatioand not by that which follows; by a stronger reason they nem spretam : ought to enter into the Countrey conquered from the And a little Allie, for the recovery thereof; but excuses in this kind after, What more do I ow proceed from those, who fail in their faith, courage or to thee, O means to recover.

Pontius Samtution made to the Romans, Roman? what to the League?

what to the Gods, the Judges of the League? whom shall I bring unto thee to he the Judge of thy anger, and of my punishment? I refuse no People, nor pripate Men.

Contribution is one of the main Ingredients in a + Anno 1515. League, and is of great difficulty to regulate. It is Vide Six Rob. made either in Men or Money; the Men are entertain- of the Treaed by all Parties, or by him only that hath need, or other-ties of Amity wife as the League is. Henry the 8th + made a League and Marriage.

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with Francis the French King against the Emperour Ma ximilian and Ferdinand, for the Recovery of Millane. which he did, the Protection of his Neighbours, and Reduction of the Swife from the Imperial side; for which An. 1515. vid. he employed the Bastard of Savoy, the agreement was Sir Robert Cotof reciprocal Succour of ten thousand Men if the War were made by Land, and of fix thousand if it were made by Sea; and in all other occasions the French King was bound to affift the King of England with twelve thousand Launces, and the King of France with ten thousand Foot, at his Charge that had need.

> So where Contribution is concluded for Money, there are difficulties that do arise from the Person or Place where it must be kept, for to deliver it to the hand of the strongest, is not fafe, for fear they shall not be able to call him to account, to lay it in a weak Place, were to oppose it to the attempt and force of the strongest, or to him that shall first take Armes; but it has been usual, the summe has been ad-

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vanced, not till after the War begun.

Andrea Mauroceni Hist. Ven.

XII. Leagues Concluded by the Deputies of the Confederates, there fometimes falls out a Difficulty who shall Ratifie and Declare himself first: In the League which was made between Francis the first, the Pope, and the Princes of Italy; the King refused to ratifie until the Pope and Venetians had ratifi'd before him, and in that he fo cunningly wrought, that he procured the Colleagues to declare and begin the War, whilst that he treated secretly for himfelf, to the end he might make his Conditions with more advantage; this he declared was for fear those Italian Foxes (hould show him the like.

† If one part hath violated part from it; for the feveral Heads of the League have force of a Condition : So Gro-5. 15.

XIII. Leagues made for an Enterprise, succeed seldom according to the hope of the Allies, if the Enterprise be the League, the long; for belides the preparations be long, the Opinions other may de- divers in the pursuit, the resolutions inconstant, the interests of Princes or States in a League may change with time, or with the practice of him against whom they are in League, in withdrawing some one of them, or every one the making him to fuffer more loss than the rest, for feeing himself ill defended or succoured by his Confed rate, tius conceives and that he was in a greater danger to lose than his lib. 2. cap. 13. Companions; he then studies to retire + and to make his acce d

accord apart, as did the Venetians with the Turks, after the loss of Cyprus.

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XIV. The ordinary causes of the Rupture of Leagues are distrust or jealousie, as if one hath had conference with the se conferent, sed Enemy, without the confent of the rest; if that which ferveth for the safety of one, diminish the safety of the other; to promiserant inconftancy, variety, comardize, division, usurpation, without open to non prathe confent of the others.

So if he treats with the Enemy, not comprehending the vel tantillumes other Allies, but as Adherents; as Lewis the 12th left the dittis pars al-League of the Venetians, for that they had made a Truce terutra transgrewith him, and had prefumed to name him only as an Adberent: by the Opinion of Bryan, that if all the Subjects of England would make War with a Confederate Prince or Republique in League with the King of England, without the affent of the King of England, that fuch a War was no breach of the League; and upon the same reason was the resolution of the Judges in the Duke of Norfolk's Case, where the Question was, whether the Lord Herise, and other Subjects of the King of Scots, that without his affent had wasted and burnt divers Towns in England, and proclaimed Enemies, were Enemies in Law, within the Statute of 2 , E. 3. the League being between the English feudali dicitur; and Scots, and refolved they were, and that the League Et fifeivero velremain'd.

KV. The Succours that one Confederate must afford jufte offenders, another Confederate (according to the Laws of Leagues) frecialiter furo against Confederate, is of a great consequence : Three requisitus, meum Princes Allied, the one makes War against the other, tibi, ficut potero and demands fuccours from the third : In this Case, if prestabo auxithe Treaties of Alliance be onely for Friendship, it is certain he is not bound to give any fuccours : But if galopoli, the Treaty carries an Offensive League, he must succour the most ancient allied by a precedent alliance: If the pre-cedi, quo minus cedent Alliances have been made both at one time, he Samniti populo must succour him that is Allied in all Offensive and De- liberum arbifensive Leagues : but if the League be Offensive and De- trium fit. Liv. fensive of either side, he ought not to succour either; but he lib. 8. may mediate a * Peace, and cause the difference to be judg. Grotius de Jued by the Common Allies, which being propounded with Te Belli ac Paa Declaration that the refuser, or having once submitted 6, 13.

Soluti fæderis culpam fuftinent, non qui deferti ad alies qui quam jura-Rant. Alibi apud eundem fi deretur, rupta fore patta. Toucyd. Lib. I.

19 E. 4. Vide Stat. 2 H. s. cap. 6.

Hill. IA Eliza in the Duke of Norfolk's Cafes 4. Inft. fol. 142.

† In fidelitate le te aliquem generaliter vel lium. Orat. Demosthen. de Me-

* Nihil interpacis bellique

cis lib. 2. c. 35

In fidelitate feudali dicitur : Et fi fcivero velle te aliquem juste offendere, & Inde generaliter vel Specialiter fuero requifitus, meum tibi ficut potero praftabo auxilium. Demofthenes Orat. de Megalopoli.

will not yield to Judgment, that he will incour the other. as the Swede and Swiß, upon feveral occasions have done. notwithstanding in point of State in such occasions they ufually ballance their Effate, and looking more to fafety than Justice, they succour him who being enforc't, may weaken the powerful, who is more to be feared; yet to unjust Wars there is no obligation, then certainly he ought to be preferred, who hath a just cause of War.

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XVI. By the Lawes of Alliances Princes may aid particular and Common Allies, if they be wronged by one of

the Allies.

Equals.cannot War', nor demand Peace.

But he which is not comprehended in the Treaty of Aldirectly refuse liance, cannot be defended against him that is Allied without breach of the Alliance; therefore Mediation in fuch cases is the only hopes of the oppressed, which not having its effect, if the oppreffed put themselves into the protection of the Mediator, they then become in the nature of his Subjects, and then that Prince is obliged to their fue-Liv. 3. Polybius cour and defence, even against his Allies, and this is by Na-

in excerptis Letural Right. gationum 35.

XVII. By the Lawes of Leagues, though the Oath When Edw. binds only the Person, yet the Promise binds the succession; the 4th was chased out of for though some do hold that Leagues do depend upon the Kingdom, the Oath as their firmament, yet that is not for and Henry the for the most part of the efficacy of such Leagues rests in 6th was let up the promise it self, to which for Religion sake the Oath is again; yet by added. Hence it is, that Promifes made to a Free-People. reason there are in their nature real, because the subject is a permanent was inferted into the same, matter, although the State or Republique be changed these words; Viz. with the King and Realm, that the League did remain perpetual. Phil. Cominise lib. 3. cap. 6.

pactis.

Ulpian. Leg. into a Monarchy; yet the League remains, for that Jure Gentium, the Body, i. e. the Power is still the same, though the fiel. pactum. D. Head be changed. And the Person is inferted into the agreement, not that the agreement may be personal, but to shew with whom it is made, for if it be inserted into the League that it shall be perpetual, or that it is made for the good of the Kingdom, or with the Person and his

his Successors, or for a time limited, the same does most Addense pol-

apparently demonstrate the thing to be real. ... vetin canforter

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However in all Leagues which tend to Peace, though Post morten He there may remain formewhat, whereby words of ambiguity may arise; yet the most pious way of interpreting in An. 1589. hath been to account the fame rather real than perfonal, Vide & infigfor all Leagues made for Peace or Commerce, admit of a nem locum apud favourable construction, Leagues Defensive have more of fa- Cambdenum is your. Offensive of burthen.

XVIII. Leagues made with Princes, although they que Gall, & happen afterwards to be driven out of their Kingdoms Scotis. by their Subjects, yet the League remains firm and good, to Nabis, We for the Right of the Kingdom remains with fuch an un- have made no fortunate Prince, notwithstanding he hath lost his King-friendship nor dom : On the other hand, Leagues made with the Inva fociety with der cannot be good; for his Caufe being unjuft, is odious; thee, but with but if the People will make him King de facto, and inveft imm the Queftion is then out of all controversie; King of the Lafor then become a King Regnant, and by the Laws of cedemonians. England, if Treason be committed against his Person, and 11 Hen. 7. after he is beaten out, and the King de Jure comes to cap. I. his Crown, the King de Jure may punish those Traytors 9 E. 4. 12. with death.

The Earl of Warwick having raifed an Army in France and Flanders, invaded England, and within five or fix dayes after his landing, (King Edward's Forces betraying Ed. 4. in An. him) the Earl became Master of the Realm, the King 1470. flying for protection to his Kinfman the Duke of Burgundy, he kindly in his misfortunes entertained him; yet while he was in this banished estate, the Duke of Burgundy renewed the League with the English, it being agreed, that notwithstanding King Edward's misfortune. the League remained firm and unviolable between the Duke Charles of Burgundy, and the King and Realm of England: So that for Edward they should name Henry lib. 3. cap. 6. (who was newly taken out of the Tower by the Earl of Riges qui Rig-Warwick, at his chacing out of King Edward.) Now the nis exuti funt true reason that Leagues remain, and are firm, notwith bonis tiam jus standing such a change, is, because there goes along with legandi perdithem a tacite condition, viz. of holding their possessions, derunt. and therefore the World wondred not, that His late

de Fædere anti-

3 Instit. fol. 7.

Sacred

Sacred Majesty having fworn a League with the Kind of Spain, exprelly as he was King of Portugal, did not withstanding receive two Embassadonrs from the then new King of Portugal; and that without being judged either in England or Spain to have broken his former Oath and League.

The Duke of Guife having formed the League against Henry the Third, which was, that in regard the King was fo cold in the Profession of the Romish Faith, that it was in danger to be extinguisht by the increase which he permitted of the Reformed Religion; especially seeing Henry the Fourth then King of Navar, was of that Religion, and was to fucceed to the Crown; wherefore by the Mediation of Philip the Second of Spain, the Pope quaand which in point of Government was to fet him above the King, avowed him Protector of the Catholique Faith

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Hiftory of France in the Life of Henry the Third.

Peter Mathew lifted the Duke of Guife, Head of that Catholique League, in the Kingdom of France. When Henry the Four fucceeded the Crown, then this League for fe ligion was most violent, and the Spaniar without. hoped, by nourishing thus the Division within, to carry all for himself at last. To avoid which gin, and to anfwer all, the King chang'd his Religion, and negotiated by d'Offat, to be received by the Pope as a dutiful Son of the Church of Rome, demanding absolution for what was past, and making large promises of due obedience for the time to come; the King of Spain's interest was that he should not be received, and thereupon he endeavoured to perswade the Pope, that King Henry did but diffemble with him, and that under this difguise he would easiest ruine the Romish Religion: notwithstanding this, the Cardinal obtained his Reception, Absolution and Benediction through the many promises and presents which he made to His Holines, whereupon the Spamards defignes were in a moment all blown over from France, but fell heavily upon the United Provinces which were forely opprest, for that they apprehended the loss and ruine of their Countrey, and thereupon they implored affistance from King Henry, who received their Amballadours very gracioully, and gave them allurance of relief: The King of Spain, who wanted no good intelligence

ligence in the Court of France, immediately remonfrates to the Pope, that his former inclinations concerning Henry's Diffimulations did now appear in the face of all the World; and that feeing His Holines had been fo credulous, he knew not now whether they should be able to fave the Catholique Faith from being subjected to the Reformed Religion or no : For whereas the Hollanders had revolted from him, onely because he resolved to use the true means for the establishment of the Romish Faith among them, and that now he was in a fair way of reducing them, (which conduced fo much (by His Holines his Opinion) to the establishment of the Romish Faith) Henry had taken their party against him in that work : and that at Paris he had received their Ambassadours to that purpose, although he knew they were his Lawful Sub-

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This startled the Pope not a little, who charged d'Offor having betrayed him, and put the Church in danger; this Argument was as fubtil on the Spaniards side, as changing Religion was on King Henry's; and therefore the Cardinal was not a little perplext, how to answer it to the advantage of his Master; as also coherently to the confiderations of his former reception into the Church : But at last he replyed, That His Holines needed not wonder how in reason of State; those different Religions might joyn together for political ends, without hazard of altering Religion : Thus David fought protection of the Philistins, and Joraham redeemed the finfull Sodomites: That he took it, to be upon the fame ground, that His Holines himself not long before, received a Persian Ambassadour, who was fo far from being an Heretick; that he never pretended to the name of Christian: That it was a plaufible Argument, which the King of Spain used, in Vide Peter complaining of Henry's receiving and avowing their Mathew's Hift. Ambassadour, especially knowing at the same time that of France in they were Rebels, and could pretend no Right nor Title feparate from his Crown: For Princes (quoth he) when Ambassadours are addrest to them, never inform themselves of the Rights and Title of those

Vita Hen. 4

possession of the Force and Power of those places from whence the Ambassadours are imploy'd, for it would be an endless task, and require an infallible true History in Regno di- c of the World (which is not to be made by Man) if all the Ambassadours before their receptions should be oblieged, first to prove clearly to the World the just Right by which their Masters derive those Titles and Jurisdiction ons, which they assume to themselves.

Princes from whom they are fent; but whether they have

viso gens una, pro tempore quafi due gentes babentur : And Princes are to have an

eve to the Power which each Kingdom hath to afford benefit one to the other, and not to examine their Titles.

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Di Alliances unequal, and of Protection.

1. Of Alliances unequal, as in reference to the acknowledging a Superiority or Protection in another.

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II. Of Protections by a Prince or State voluntary or mercenary.

III. Of the Duty incumbent on the protected; and the obligation in Honour and Justice on the Prote-Etor.

IV. Of Alliances unequal, and of the ordinary causes that may tend to a rupture of the same.

Y. Of the causes extraordinary that may occasion the breach of such Alliances.

VI. Of Faith and affurance implicitely discharged by the delivering of Hoftages.

VII. Of the differences of Leagues contracted by Princes, through force or fear, and private Contracts

made with private persons by reafon of the same.

VIII. Ambiguity in words given, occasion to Princes to depart from the League, and of the Reputation of Princes on fuch occasion preserving the Alliance.

IX. Of the firmnel and affurance of Alliances whether to be found more in Princes, or in Republiques.

X. If one party bath violated the League, wbether it be lamful for the other to depart from the Same.

XI. In the construction of Leagues. the thoughts not the words of Princes to be confidered.

XII. Of things favourable, things odious, and others of a mixt nature to be used in the interpreting of Leagues.

TNegual Alliance is that which is contracted betwixt Princes or States unequal in Honour, or in Power, Rhodius post with unequal conditions, the acknowledging the other, not Aristotelem, A. for Master or Lord, but by Honour as the more powerful, and the better qualified, and fome for Protector; and these partes hoc air Treaties are made with those States, which take or give tentioni plus bo Pension, or which put themselves into Protection.

Tribute is payed by the Subject, or by him, who to en- plus auxilii dejoy his Liberty, payes that which is agreed upon to him feratur, Grothat hath forced him to do it. But a Pension is held voluntary from him that is in Protection, or from him that is in all other things equal to the Treaty of Alliance perty offriendto hinder the Pensioner, that he joyn not with the Enemy, as the Swiß to the French, or to have aid and succours from him.

hour, and the weaker have more help: Proculus adds, that fuch a clause is inferred in the League, to fignific the one is superiour in Authority and Dignity; for both are free, but are fub fatrocinio, non fub ditione: Livy lib: 37: Cicero Offic. 2:

Andronicus micitia inter proprium, at ponoris, infirmiori tius lib. T. cap. 3. 5.21. num. 2. It is the pro-

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equals, that the ftronger have more ho-

fhip 'twixt un-

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Leg. non dubit. II. But that Protection is most true and Honourable when a Prince or Republique takes upon him the defence of another, freely without reward; though fome, if not all, find it most necessary to ballance honour with profit, from this maxime, That a pecuniary interest obliges more to succour, than when barely obliged by Oath.

The Genoeses having put themselves in the protection of the French he thereupon changed their conditions into the end it another. might be in his will to deprive them when he should think dinal. Thuse. P.

III. By the Law of Protection, he that is protected ows all Respect and Honour to his Protetter, against whom if he conspire or attempt, or strayes from his Duty, it is lawful for the Protector to make better affirance; nay; King, revolted; if he pleases, to make himself Master: But then on the other fide, the Protector ought to defend and fuccour the Protected, and use him well; for otherwise he to Priviledges, may withdraw himself from the Protection, and seek

IV. In Alliances that are unequal, there are four kind of Controversies may happen.

First, if the Subjects of a Prince or Republique, that is fit. Vide car- under the protection of another, have committed any thing against the League. P. Concl. 933.

Secondly, if the Prince or Republique be accused.

Thirdly, if the Fellows, which are under the protecti-This holds as on of the same Prince or Republique, contend with one another. Leagues equal

Fourthly, if the Subjects complain of their own Ruler.

To the first, if a fault appear, the Prince or Republique

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as unequal. Grot. de Fure Belli & Pacis, lib. 1. cap. 3. 5. 21.

well between

is bound either to punish the offender, or render him up to the party injured, and fee or endeavour that damages This hath the Came right in Leagues that nt quis ultio-

may be recovered. But one of the Affociates in the League, hath no right to are equal. Nam apprehend or punish the Subjects of his Confederate. To the fecond, the Confederate hath a right to compel his Confederate to stand to the League, and if he will not, to punish him; for that one may take satisfaction or revenge

of him that hath offended; and this happens as well afubditus non fit. mongst those that have no Confederation at all.

To the third, as in Confederacies equal, the Controversies are wont generally to be brought before an Affembly of the Confederates; that is to fay, fuch as are not concerned in the question, or else before Arbitrators, or elfe

qui peccavit Grot. de Jure Belli, lib. 1.cap. 3. S. 21. 7. 5.

nem sumat ab eo

qui peccavit, sa-

tis eft ut ipfe ei

elfe before the Prince of the Affociation, as a Common Ar-

So on the other hand, in a League unequal, it is agreed for the most part, that the Controversies be debated before manding, for

him who is Superiour in the League.

To the last, the Confederates have no Cognizance. In common Affaires out of time of Assembly, even where the League is equal, the Custom is for him who is chose thief of the League, to have command over the Confe- end. lib. cap. 3. derates, according to the Speech of the Corinthians in Thu- 5. 21. num. 6. cydides, It becomes them that are Princes of the League, not to feek their own particular advantage, but to content them- cipes funt, circa selves with an eminency above the rest, in taking care of the suas quidem u-

Common Interest.

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V. Though that the breach of Faith be much practi- precipuum sufed in fuch affairs; yet there are few Princes found, which have not found a pretext, some have pretended to be circumvented by Errour, others by change of Affairs have re supra cateros. pleaded an excuse, as great wrongs, or inevitable loss, and In Orat. Corinapparent danger of the ruine of their States, which are thiorum. the causes, wherein some say, that an Oath is not obligathe Condition, by reason of the Oath, being impossible or unjust to these limitations, some hold they must not keep Faith with an Enemy of the Faith, nor with him that hath broken his, nor with a Subject, nor with a Thief or Pirat; certainly if it be not lawful for a Man in these Cases to keep Faith, it is not lawful to give it; If it be lawful to capitulate with fuch Men, it is necesfary to hold that we promife, that is, (we prefume) when the word is given by him that may give it, and that they relie upon it,

VI. If Holtages are taken, he that gives them is freed from his Faith; for that in receiving Hostages, he that receives them hath relinquished from the assurance, which he had in the Faith of him that gave them; fo where a Captain for his Prince gives his word without Commission,

it binds not the Prince.

VII. Some Lawyers would judge of Treaties as particular Contracts, by which means they would stretch the Consciences of Princes; for, say they, that as a private Man is not bound by that which he hath promifed by

But that proves not any power of com-Princes do uíually try their causes before Judges of their own choofing.

Decet eos qui Fæderis Printilitates nibil mere; at in communibus rebus curandis emine-

Oldradus

Gregorus Perjurum Deo culpam impingit negligentia.

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force or fear, fo it ought to take place amongst Princes and in Treaties which are made betwixt Soveraigns, but that is ridiculous, for that were in effect to banish Fanh from all-publique Negotiations; for there is no Treaty but is usually made in Arms, by Force or through Fear, to lose either Life, or Goods, or Liberty, or the State; which are causes of just fear, and may shake the most constant.

Upon the words Eviling and Euig, to retain the Landgrave of Heffe.

VIII. Some Princes defirous to flew themselves more Religious in these Ruptures, have taken subject and occafion upon the ambiguity of fome clauses in the Treaty, or upon equivocation, as Charles the fifth did; or elle they feek other occasions, as attempting against those whom their Athe is bound to defend; to the end, that drawing him into the Field, He may lay the cause of the Rupture on him.

But Princes, who respect such Treaties with a pious intention of preferving them, alwayes remain constant and firme; and though occasion may offer it felf, by which they might get advantage by the breach; yet when they remain durable, such respect is afterwards had to their Word and Honour, that fewer and lesser securities will be demanded of them, than of one whose Faith is doubted

Famous was the carthaeinians Senate to the Romans. upon the affaulting of Saguntum'; Ego an privato publicove confilio Saguntum op-Seo; fed utrum jure an injuria;

IX. But affurances in cases of this nature have been the answer of found more in Republiques than in Princes; for though Republiques have the same mind, and have the same smtentions as Princes, yet for that they move but flowly, it will cause them to stay longer in resolving: Famous is that of the Athenians, when Themistocles in his Oration told them, That he could discover a matter in which the Athenians would reap great advantages, but he could not tell it, for fear the discovery would take away pugnatum, non the opportunity of atchieving it : whereupon the Athequerendum cen- nians deputed Aristides, to whom he should communicate the fecret, and with him should consult about the ob-

nostra enim bec questin atque animadversio in civem nostrum est, nostrum an suo secerit arbitrio, vobiscum una disputatio est, licuerit ne per fædus fieri : Whether Saguntum was affaulted by private or publique Counsel, we conceive it not to be made the question; but this, whether it was affaulted justly or unjustly; for to our selves an account is to be given by our Cirizens, whether he did it of kimfelf, or by Commission; with you alone this is dispurable, whether it were a violation of the League, or no, Livius lib. 31.

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taining it, they meeting Themistocles demonstrated that it was in the power of the Athenians to make themselves Masters of all Greece, for the Grecian Naval Army was then in their Ports and Protection; whereupon Ariftides reply'd. The same was a breach of Faith: But it was answered, it being for the publique, all considerations of that kind ought to be land aside; whereupon Aristides being called by the People to give a Report, told them, Themistocles's Advice was exceeding profitable, but dishonest, for which cause the People wholly refused it,

X. If one party has violated the League, the other may most certainly depart from it, for the transgression of the Articles, be it never fo little, makes a breach of the Agree. ment; unless it be otherwise prevented by Condition, which may be, by inferting into the fame, + That for every Offence

st may not be lawful to depart from the League.

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XI. In all Leagues, the thoughts of Princes and States are to be considered, not what they said; yet because internal Acts are not visible by themselves, it is necessary senseris, non quid that somewhat certain should be determined, i. e. reduced dixeris cogitanto Heads'or Writings; otherwise there would be no obligation at all, for then every one might free himself by affixing on his own words what fense he pleases: Hence it is, that by the dictates of Natural Reason, he, to whom any thing is promifed, hath a right to compel the promifer, to that which right Interpretation fuggesteth, for otherwise the matter would have no end.

XII. In the Interpretation of Leagues and Truces. there ought to be a very great care had, in regard of the Sacredness of them; therefore in things promifed or fecured by fuch Leagues, fome are favourable, fome odious, some mixt, or of a middle nature. Those that are most favoured, are those whose words tend to Peace, not to War; whose foot-steps leave ever behind the deep impressions of Misery, Devastation and Poverty, but more especially when such Leagues are made for War Defensive than otherwise; but those are called edious, which burden or oppress one part only, or one more than the other, and likewise such as tend to matter of Revenge or Punishment, or to violate some sormer acts, or obligations, or the bringing in a change or innevation of what bat 6

† Grotius de Fure Belli ac Pacis, lib. 2. cap. 15. 5. 15. In fide quid

dum. Çic. de Qf.

hath been constantly settled, and used before. Mixt, as where In L. non pos a change is propounded; but that is with the Sifters of funt. D. de Le. Moderation and Peace, which are proportionably good, according as the change may be elteemed .- Therefore the Standard Rule is, that in Leagues and Treaties not odious, the words are to be taken according to the full extent and propriety of popular use; and if there be more fignifications, the largest is best: on the other hand we are not to recurr to fignifications plainly improper, unless

Pid. exemplum L. Cum vicommiffes.

would follow: Again, words are to be taken ever more strictly than propriety suffers, if it be necessary for the c. de fidei avoiding of inequity or absurdity. But if there be not such necessity, manifest equity or utility in the restriction, we are to flav them within the narrowest bounds of propriety, unless the circumstances disswarde; on the other hand in Leagues or Promises odious, even a figurative speech is admitted, to avoid the odium or burthen, therefore in Da nation, Remission of ones Right, Dominion or Property, they are alwayes to be construed to those things, which were probably thought on, and really intended. So Aids and

otherwise some absurdity or inutility of the agreement

Grotine lib. 2. Succours promifed from one part only is to be understood pp. 16. S. 12. to be due at the charges of him who shall acquire them.

CHAP. IX.

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Of Treaties of Truce and Reutrality.

I. Of Treaties, the various forts. II. Of Rules in Cases doubtful. III. Of Truces amounting to a

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Peace. IV. Of the advantages between

Treaties of Truce and Peace. V. How preserved and punished in England.

VI. Of Treaties of Neutrality, the various forts.

VII. Of the advantages of the Same.

VIII. In Cases of necessity where be ought to declare, and for whom.

Reaties are either with Enemies or Friends, or with Persons which desire to continue Newers with us. or we with them.

The Treaties which are made with our Enemies, are ei-

ther for a time, or perpetual.

Perpetual, as the Peace that is made to compole all differences, and the War that is undertaken for Conquest, or for Reparation of injuries, or to restore the Commerce.

Treaties which are made for a time with our Enemies, are called Truces, the which are either General, for all the States of the one or the other Prince, for all Perfons, and for all forts of Commerce: Or elfe they are Particular, for certain Places, for certain Persons, and for the Commerce.

II. When any one is bound by Alliance not to make Peace or Truce, without the confent of his Allie, and whose agreement feems doubtful, they fet down no prefixed time, but, that it shall continue till he refuse, and some rea-Sonable time ascertained after; as that which was made be- Lewis the 11th twixt Charles the Eighth, and the King of Spain.

In the Truce that was made between Edw. the 4th, and there was like provision made

for charles Duke of Burgundy, but he refused, and concluded a Peace for himself apart, being angry with Edward the 4th, for making the same. Philip. Com. lib. 4. c. 40. So Lewis the 11th concluded a Truce for nine Years with Edward the 4th when he had invaded France. Phil. Com. lib. 4. cap. 8.

III. Sometimes a General Truce holds the place of a Peace.

Peace, as that of a hundred years. Such Truces are commonly made betwixt Princes that are equal in Power, and will not quit any thing of their Rights by Peace; and yet defire to live quietly in the State wherein they are, fatisfy-

ing by this medium, the point of Honour.

IV. Treaties of Truce are many times less subject to Rupture than a Peace, which is made perpetual; for Princes or States that find themselves aggrieved with a Treaty that is perpetual, feek out plaufible reasons to forfake it, feeing the grievance cannot be otherwise repaired; but if the time be limited and expired, they may purfue that which they think ought to be granted, and the other may oppose, and if they have a desire to continue the Truce, there is nothing so easie as to renew it. Hence it is become a Maxime in State, That seeing Treaties are grounded on the Interests of Princes which change with the time, it is necessary to change and settle them at the end of the time, or to break them off: for it is in vain to trust to a bare Friendship.

A Truce is likewise made to advance a Peace, and to treat it; fo likewise it is sometimes promoted for the more honest discharge of a League, which is made with some other Prince, whom they have accustomed to comprehend therein: fo as a Peace following it, or a Truce not being accepted by him, they take occasion to leave the League, it being not his fault that leaves it, that the War was not

ended.

* For the Right remains with him: how-

2 H. 5. cap. 6.

And although it feems that a Truce cannot by it's condition prejudice the pretension in the Principal; yet it is most ever, he hath certain, that if he which is chased out of a contentious loft the posses- State, consents, that during the Truce, the Commerce shall fion. Grot. de be forbidden to his Subjects, he doth wholly stop the Gate, Jure belli acpa- Lewis the 12th did in the Truce which he made with Gencis, lib. 2. cap. Salve, after the Conquest of the Realm of Naples.

In England by the Stat. 2. H. s. cap. 6. Robbery, Spoiling, breaking of Truces and Safe Conducts by any of the Kings Liege People, and Subjects within England, Ireland and Wales, or upon the main Sea, was adjudged and determined to be High-treason; but this branch concern-20 H.6. cap. 41. ing High-treason, is Repealed by the Stat. of 20 H.6. cap. 11. but by the faid Act of 2 H. g. for the better

observa-

observation of Truces and Safes Conducts Conservator Induciarum & falvorum Regis conductium, was raised and appointed in every Port of the Sea by Letters Patents, his Office was to enquire of all Offences done against the Kings Truces, and Safe-Conducts upon the main Sea (out of the Request of the Counties, and out of the Liberties of Cinque Parts) as Admirals of Cultom were used to do. Sir John Taebiel was Commons was committed to the Tower, for taking a French Ship, and be making farisfaing brought into Parliament did there justifie the same; but dion for the at last confessed his fault, and begged the Kings Pardon: los. 11 H. 4. + Generally all Leagues and Safe-Conducts are, or ought ad Parliament. to be of Record, that is, they ought to be Inrolled in the Chancery, to the end the Subject may know who are in A ton Abridem, mity with the King, and who not: who be Enemies, and 19 E. 4. 6. B. can have no Action here, and who in League, and may 18 H. 6. cap. 4. have Actions personal here.

Sometimes they have been inrolled in the Wardrobe, as

being matters of State, and on woods in obesit has

Note, In all Treaties, the Power of the one Party, and the other ought to be equal; nor are they to be held firm till ra-

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Before the Statute when any breach of Truces or Leagues happened, or was occasioned by the misdemeanours of An. 10 E. 3. m. any of the King of England's Subjects, there did usually 36. intus de puissue forth Commissions under the Great Seal of England, to enquire of the infringers of the same, and to punish and Truga bominis award fatisfaction to the injured.

VI. Princes who neither love nor hate any thing abso- concesse delilutely, feem generally inclined to Neutrality, and in that querint, govern themselves in their Friendships, according to their interests; and Reasons of State, in effect is no other but

Neutrality may be of two forts; the one with Alliance with either part, the other without Alliance, or fo much as the least tie to the one or other, which is that which pro-

perly may be called Neutrality.

The first is governed by the Treaty of Neutrality, the latter by the Discretion of the Neuter Prince, whose carriage ought alwayes to be fuch, as that he may not give the least glimpfe of inclining more to one than to another.

VII. The advantages of Neutrality, are, that the Neuter

f And at the Lords and tent. quinden. Hill. Vid. Cot-20 H. 6. cap. I.

19 E. 4. 6. B.

Maxime. 501

Rot. Scotie de niendo illos qui contra formam bus de Scotie

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Neuter Prince or Republique is honoured and respected of both Parties, and by the fear of his declaring against one of them, he remains Arbitrator of others, and Master of himfelf.

And as a Neuter neither purchases Friends, nor frees himfelf from Enemies; so commonly he proves a prey to the Victor: hence it is held more advantage to hazard in a Conquest with a Companion, than to remain in a State wherein he is in all probability of being ruined by the one or the other.

But Princes that are powerful, have used generally to preferve a Neutrality: for whilft petty Princes and States ruin themselves by War, he fortifies himself with means; and in the end, may make himfelf Judge of their differences.

On the other hand, it hath been conceived, that Republiques that are weak, what part foever they take, it will be dangerous unto them, especially if they are in the midst of two more powerful States than themselves; but Experience hath made it appear to the contrary, that Neutrality is more beneficial to a weak Prince or Republique; fo that they that are at War be now barbarous or inhumane: for although a Neutrality does not please either Party, yet in effect wrongs no Man; and as he doth not ferve, fo he does not hurt; besides his Declaration is reserved till the issue of the War, by which means he is not obliged by fiding with either Party, to gain or lose by the War.

Much practifed by the Free Princes and States of the Empire.

VIII. But if the Neuter be prest by necessity to declare. himself, he must do it for the most powerful of the two parties, following that Roman Maxime, That either they must make themselves the strongest, or be a friend to the strongest: So they of Strasburg + declared for the Empire against the French: on the other hand, if the Newer fees, that joyning to the weaker, will ballance the power of the stronger, and by this counterpoize reduce them to reason, the same hath been generally followed upon the Maxime, That the safety of States consist chiefly in an equal counterpoize of the one and the other; for as the greatness and opulency of a Prince lib. 35. Scripta draws after it the ruine of their Neighbours, it is wisdom to prevent it.

+ An. 1674.Conful. Quintus ad Acheos, quod optimum effe dicant non interponi vos bello: imo nihil tam alienum rebus veftris eft: Quippe fine gratia,ne dignitate pramium victoris eritis. Lucius Ammirat difc. polit. lib. 18. difc. polit.

and chief by the seeks by but to did not be the

antodane was defined as

Of the Immunities and Priviledges of Ambaffadozs, and other publique Minifters of State.

and Agents generally.

II. Of their Right and Protection by the Laws Divine, and of Nations.

III. Of Precaution, whether the fame may be given to such not to come, and attempting against fuch interdiction, how dealt with, and of punishment of those that Shall burt them by the Laws of En-

IV. Of the several Causes, that Princes or Republiques may reject Such publique Ministers of State.

V. where Ambassadors may be subjected to punishment by the Laws of Nations.

V L of the proceeding against them by Princes and States at this day, according to the practice of Nations.

VII. Of the various proteedings against them by several Princes and Republiques, illustrated in fifteen Precedents of examples.

VIII. Of the proceeding against them, according to the practice of England.

I. Of the Function of Ambaffadors IX. Ambaffadors, where they forfeit their Priviledge by the Laws of England.

> X. Where actions committed by them. though against the known Laws. yet oblige them not to a forfeiture of their Priviledge.

> X I. Of the Duty of Ambasadors in Cafes Civil, and what their Office includes for the King and Nation, whom they represent.

> XII. Whether the House of an Ambaffador can be a Sanctuary, or whether he may exercise a Royal Jurisdiction over bis Servants and Vaffals; whether the fame proceeds from the Laws of Nations.

> XIII. whether the Goods of an Ambaffador may be feized for debt, or other Contracts.

XIV. whether Out-rages committed by publique Ministers of State, can subject them to punishment.

X V., Of the punishment of those that commit any Out-rage on them.

XVI. Some Observation of the immunities and Government by the Laws of Venice of their Ambaf-

N Ambassador and Agent is the same thing, if we consider only the Function of their Charges : only in this they differ; an Agent hath charge to represent the Affairs only, but an Ambassadors ought represent the Greatness of his Master, and of his Affairs.

II. The

11. The Right of Ambassadours is secured both by the Safeguard of Men, and also by the protection of the Law Divine; therefore to violate this, is not only unjust, but im-

Pompon. Leg. & quis D. de Le-Rationibus.

Livy lib. 1. 6.

pions too : and as Protection is given to the Legates of Supream Rulers by the Laws of Nations, fo by the Givil Law there is a protection likewife for Provincial Legates, and Heraulds, &c. This Right of Legation was originally provided, faith Livy, for a Forreigner, not a Grizen; yet in Civil Wars, necessity sometimes makes place for this Right besides the Rule, as when the People are so divided into equal parts, that it is doubtfull on which fide the Right of Empire lieth, as that unhappy spot of Flanders, or when the Right being much controverted, two contend prived of their for the fuccession to the Throne; for in this Case one Na-

when the Honfe of York and Lancaster contended for the

Crown; nay, this Right of Legation hath been to preferred.

that the very Mellengers of Rebels have been protected.

Kings conquered in a solemn War, and de-Kingdom with tion is reckoned as two, and fo was the State of England. other Royalties, lose the right of Legation. P. Emilins detain'd the as were those of Holland by Philip of Spain: So great are. Heralds of Per- spect + have Nations had in all times to such Men, that feus, whom he even Pirats and Robbers, who make not a Society, nor conquered.

Traytor, fled

Ambaffador to

have any Protection by the Law of Nations, and with † P. Poole a whom neither Faith nor Oath (as some conceive) may be to Rome, the kept; Faith being given them, obtain the right of Lega-Pope fent him tion, as once the Fugitives in the Pyrenean Forest. the French King, of whom the King of England demands his Subject. Sed non preval

luit. Coke Instit. 3. fol. 153.

III. Ambassadors may by a precaution be warned not to come, if they dare, they shall be taken for Enemies; but once admitted even with Enemies in Arms, much less with Rot. Pat. 3 R. Enemies not in actual Hostility, have the protection and fafe-guard of the Laws of Nations; and therefore their Quality being admitted by fafe-conduct, they are to be preferved as Princes; and fo it was declared in Parliament, where the killing of John Imperial, Ambassador from the States of Genoa, was High-treason, Crimen lese Majestatis.

* Legatus ejus vice fungitur à quo deftinatur, bonorandus eft ficut ilbe cu-& Legatos vio-

2. num. 18.

jus vicem gerit, Nuncium Domini Regis missum ad mandatum Regis exelare, contra jus Gentium est. 22 Affice pl. 49. Note, this was three years before the making of the Stat. of 25 E. 3. Quere, if fuch a Provex is within the Stat. at this day."

So likewife of A. de Walton, the Kings Ambassador,

enendum:

quendum, who was murdered by one John Hill, for which offence it was adjudged High-treason, and accordingly he

was drawn, hang'd and beheaded.

IV. On the other hand. Ambassadors may not alwayes be received, though alwayes they ought not to be rejected: for there may be cause from him from whom they come. as the Roman Senate would not admit of the Ambassage of questionum ibi the Carthaginian, whose Army was then in Italy; the King pro possicarum of Spain those of Holland, and the then Pope the Ambassa- quarta. dours of Henry the 2d after the murder of Becket Arch-Bi-(hop of Canterbury : fo likewife from the very Persons that Second. are fent, as Theodorus Atheft, whom Lysimachus would not give Audience to, and Mr Oliver, Lewis the eleventh's Barber, whom they of Caunt refused.

So likewife where the caufe of fending is suspected, as in reference to disturb the People, or intentions rather to fow Sedition than to conclude a Peace (if fuch be indicendion their errand) or not honourable or unfeasonable; as for missos deduci those assiduous Legations which are now in use, they may just in lacum with very good right be rejected; for the no necessity of fue abesses trithem appears, by the Ancient Custome whereto they are

unknown.

The Venetian having admitted Henry the Fourth of Bellaius lib. 2. France his Ambassador, yet they interdicted him + to come with the other Ambassadors to the Chappel, till the King was reconciled to the Church of Rome.

V. By the Laws of Nations, only unjust force is kept 153. from the Bodies of Amballadors, for if the Laws of Nations be broken by him, he his fubject to punishment.

Yet the Opinion of Nations and Men Eminent for Wisdome, have been doubtful in this point, and Prece- contra jus Ledents on both fides have been avouched, one which gationum in feems to refute that polition of punishing such Ministers vinculis habit of State: The Ambaffadors of Tarquin, who had committed Treason at Rome, * and as Livy observes, were in 29, co. Infl. A. the State of Enemies; yet the Right of Nations, as he calls 153. 2 H. 5. it, prevailed so far as to preserve them, although in a cap. 6. 20 H case of hostility: On the other hand, + Salust observes, that Bomilcar, one of the Carthaginian Ambassadors, vis funt commifife ut Hostium loco effent, jure tamen Gentium valuit. + Fit reus magis ex equo bonoque quam ex Jure Gentium, Bomilicari comes et qui Romam fide publ. venerat.

Daniel's Hift of Henry the

Carolus quintus Imp. Gallia Venetorum & Florentinorum ad bellum fibi ginta milliaria, Guic.l. 18. + Card. Arnold-Offat. in his 353 Epiftle. Coke 4. Inst.

Menander Protector Juftino Imper. Avarorum Legatos. Cothmannum Resp. 22. num. 6. cap. 11. * Quanquam

who came to Rome on the Publique Faith, was adjudged guilty, rather (faith he) by the Rules of Equity, than by the Laws of Nations; Equity, that is the meer Law of Nature fuffers punishment to be exacted where there is

An Enemy is found a Delinquent, but the Laws of Nations except the bound towhom Persons of Ambassadors; for certainly their security outthey are sent, weighs the prosit arising from punishment, which may but their Pri- be inflicted by him that hath sent him (if he be willing) if unwilling, it may be exacted of him as an approver ges not those through whose of the crime. bounds they

pass without leave. For if they go to, or come from their Enemies, or make any how

Itile attempt, they may be flain. Livy lib. 26.

S. 4. MH. 40 5. Senatus faciem fecum attulerat auctoritatem .

* Co. Infit. A. fol. 152.

Sic Carolus Ducis Mediolanensis ut subdīti sui impe-

ravit, ne à Comitatu suo abscederet, Guicciardi indicat jam loc.

Hill. 13 Elize Bishop of Rosses Cafe. Co. 4.Inft. 152.

Again, as Ambassadors are not to render a reason of their actions to any other, but him by whom they are fent, and it is impossible, but by the reason of various Grotius de jure Interests, and other secrets of State, which pass through Belli ac Pacis, their hands, somewhat may be faid, which bears a show lib. 2. cap. 18. or face of Crime, (which perhaps may prove otherwife;) yet the examining and tracing of the truth, may be of a dangerous confequence; and therefore if the offence be fuch as may be contemned, it is usually to be diffem-Reip. M. Tull. 8. bled or connived at, or else the Amballadour be commanded to depart the Realm; and if the crime be cruel, and publiquely mischievous a the Ambassadors may be fent with Letters of Request to His Master to inslict punishment, according to the offence; So likewise in the precaution of a great mischief, especially publique, (if quintus Legato there be no other remedy) Ambassadors may be apprehended and executed; and if they oppose by force of Arms, they may be flain.

In the Bishop of Rosses Case, An. 13 Eliz. the question was, An Legatus qui rebellionem contra Principem ad quem Legatus concitat, Legati Privilegits gande it, & non ut hoftis poenis subjaceat; and it was resolved, that he had loft the Priviledge of an Ambalfador, and was fubject to punishment; nor can Ambassadors be defended by the Law of Nations, when they commit any thing against the State or Person of the Prince with whom they relide,

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And why Ambassadors are in safety in their Enemies Countries, and are to be spared when they commit offences, is not so much for their own or Massers sake, but because without them there will never be an end of hossility, nor Peace after Wars? neither is the Name or Person of an Ambassador so inviolable, either in Peace or in time of War, but there may be both a convenient time and a good occasion to punish them, and this standing with the Laws of Nations.

VII. The Signiory of Venice understanding that certain Traytors, who had revealed their Secrets to the Turk, were fled for protection into the House of the French Ambassador at Venice, sent Officers to search the Ambassador's House; but the Ambassador refusing them entrance, the Senare commanded certain Cannon to be brought out of the Arsenal to beat down his House; which when he saw planted, he surrendred up the Traytors.

(1.) The Amballadors of Tarquin, Morte affligendos Roman non judicarant, & quanquam visi sunt ut hostium loco essent, jus tamen Gentium valuit.

(2.) The State of Rome, though in case of most capital August. de Ligs crimes, exempted the Tribunes of the People from que Antiq. Rom. Stion during the year of Office.

(3.) The Amballadors of the Protestants, at the Council of Trem, though divulging there the Dollrine of the Church, contrary to a Decree there Enacted; a Crime and Trident equivalent to Treason, yet stood they protected from concilinating punishment.

It is generally consented by all the Civilians, That Pompos Ligs Legatis de Jure Gentium indictum est, ut corum corpora salva ult. D. de Lisint, propter necessitatem Legationis, ac ne confundantur jura gatis.

(4.) Viva, the Popes Legate, was restrained by Henry the Second, for exercising a Power within his Realin, not allowed or admitted of by the King, in disquiet of the State, and forced to swear not to act any thing in prejudicium Regis vel Regni.

(1.) On the other hand, it has been answered, that Bindlet. in they Vita Haw. 2

they are by the Laws of Nations exempted from Regal Tryal, all actions of one fo qualified, being made the act of his Master, or those whom he represents, until he or they disavow, and Injuries of one Absolute Prince or State to another, is factum hostilitatis, and not Treason; the immunity of whom Civilians collect as they do the rest of their grounds from the practice of the Roman State, deducing their Arguments from these Examples; The Fabsi Ambassadors from Rome were turn'd safe from the Chades, with demand of Justice against them only, although they had been taken bearing Arms with the Ethurian their Enemies, Titus Liv. 2. Dec.

Colloquium Machiav.lib.2. cap. 28.

(6.) King Edward the Second of England, fent amongst others a French Gentleman Ambassador into France; the King upon this Arraigned him as a Traytor, for serving the King of England as Ambassador, who was his Enemy;

(but the Queen procured his pardon.)

Rot. Scaccar. Westm. Claus. Edw. primi. (7.) Henry the Third did the like to one of the Popes Ambassadors, his Colleague flying the Realm secretly, searing timens pelli sui, as the Record has it. Edward the First restrained another of the Popes turbulent Ambassadors, until he had (as his Progenitors had) informed the Pope of the fault of his Minister, and received satisfaction for the wrongs.

(8.) Henry the Eighth commanded a French Ambassador to depart presently out of the Realm; but because

he was the professed Enemy of the Seat of Rome.

(9.) Lewis de Prat, Ambassador for Charles the Fifth, was commanded to his House, for accusing falsly Cardinal Woolsey to have practised a breach between Henry the Eighth and his Master, to make up the Amity with the French King 1523.

(10.) Sir Michael Throgmorton by Charles the Ninth of France was fo ferved, for being too busie with the Prince

of Conde his Faction.

(11.) The Popes Ambassador at Paris was arraigned for practifing certain Treasons in France, against the King in the Parliament of Paris, and was there found guilty, and committed to Prison.

(12.) Doctor Man in the Year 1567, was taken from

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his house at Madrid in Spain, and put under a Guard to a straiter Lodging, for breeding a scandal (as the Conde Teri said) in using by Warrant of his place the Religion of his Countrey, although he alledged the like permitted to Guzman de Silva their Amballador in England, and to the Tarke, no less than in Spain.

(13.) Francis the first King of France, fent Casar Tregossa and Anthony Rincone, Ambassadors to the Turk, they
were surprised by the Armies of Charles the fifth, on the
River Poe, in Italy, and were put to death; the French
King complained that they were wrongfully murdered,
but the Emperor justified their death; for that the one
was a Genois, and the other a Milanois, and his Subjects
feared not to serve the King his Enemy.

(14.) Henry the 8th being in League with the French and at Enmity with the Pope, who was in League with the French King, and who had fent Cardinal Poole to the French King, of whom King Henry demanded the Cardinal, being his Subject, and attainted of Treason, fed

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(15.) Samuel Pelagii, a Subject to the King of Morocco, pretended that he was an Ambassador sent unto the States General of the United Provinces; he came to them, and accordingly they did treat with him, afterwards he departed, and being upon the Sea, he did take and spoil a Spanish Ship, and then came into England; the Spanish Ambassador here having received intelligence of the spoliation, caused his Person to be feized upon, intending to proceed against him as against a Pirat, and imprisoned him, and upon Conference with the Lord Coke, Dordridge, and other Judges and Civilians, they declared their Opinions, That this Caption of the Spaniards Goods by the Morocco Ambassador, the same is not in Judgement of Law a Piracy, in regard it being apparent that the King of Spain and the King of Morocco are Enemies, and the fame was done in open Hostility; and therefore in Judgement of Law could not be called Spoliatio, sed legalis Captio, and a Cafe out of 2 R. 3. fol. 2. was vouched, where a Spanish Merthant before the King and his Council; in Camera Scatearis, brought a Bill against divers English Men therein fetting G 2

fetting forth quod depradatus & spoliatus fuit upon the Sea, juxta partes Britannia, per quendam Virum bellico-Sum de Britannia de quadam Navi, and of divers Merchandizes therein, which were brought into England. and came into the hands of divers English-Men. naming them, and fo had process against them, who came in, and pleaded; that in regard this depredation was done by a Stranger, and not by the Subjects of the King; therefore they ought not to be punished, in regard that the Statute of 31 H. 6. Cap. 4. gives restitution by the Chancellour, in Cancellaria sibi vocato uno Judice, de uno Banco vel altero; and by the Statute of 27 Ed. 3. Cap. 13. that the restitution may be made in such a Case upon proof made, by the Chancellour himself without any Judge: and upon that Case it was resolved, Quod quisquis extranew, &c. who brings his Bill upon this Stat. to have Restitution, Debet probari quod tempore captionis suit, de amicitia Domini Regis; and also quod ipse qui eum caperit & spoliavit, fuit etiam sub obedientia Regis, vel de amicitia Domini Regis, sive Principis quarentis, tempore spoliationis, & non inimicus Domini Regis sive Principis quarentis, quia si fuerit inimicus, & sic caperit bona, tunc non suit spoliatio, nec depradatio, sed legalis captio; prout quilibet inimicus capit super unum & alterum; the Judgement of which Case was held to be Law, and thereupon the Judges delivered their Opinions, that the Morocco Ambassador could not be proceeded against as a Pirat.

Bulftr. 3. part. Jol. 28. cited in Marshe's Case.

(16.) In the time of Philippe the Second of Spain, the Venetian Ambassador in Madrid, protecting one Bodovario a Venetian an offender, that sled into his House, and denying the Corigidor or Justices to enter his House, where the Ambassador stood armed to withstand them, upon complaint made, the Ambassador was removed unto another House, untill they had searched and found the offender, then conducting back the Ambassador with all due respect, a Guard was set upon his House to stay the sury of the enraged People; the Ambassador complaining to the King, he remitted it to the Supream Council: they justified the proceedings, condemning Bodavario to lose his Head, and other the Ambassadors Servants to the Galleys,

Galley, all which the King turned to Banishment, and to fatisfie the most Serene Republique, fent the whole process to Inego de Mendoza his Ambassador at Venice, and declaring by a publique Ordinance unto that State, and all other Princes, That in case his Ambassadors should commit any offence unworthily, and disagreeing to their qualities and professions of Ambassadors, they sould not enjoy the Priviledge of those Officers, but would refer them to be judged by the Laws of that Prince or State where they then re-Eded, and where they had injured; it was a great and a noble Saying.

(17.) In the Year 1568, Don Guhernon d' Espes was wooton, fo. 211. ordered to keep his House in London, for sending scan- flat. cris. dalous Letters to the Duke de Alica unsealed, and in 1 586 Don Bernardino de Mendoza, wasrestrained first, and

after commanded away.

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VIII. The manner of proceeding against them, has the Propositibeen conceived necessary to be, that some of the Chief Se- on to K. Jam. cretaries of State were fent to the Ambassadors, and by way of advice, that understanding that the Common People having received notice of, &c. "And that they can-"not but conceive a just fear of uncivil carriage towards "their Excellencies or their followers, if any the least " incitement should arise, and therefore for quiet of the "State, and fecuring of their Persons, they were bound "in love and respect to their Excellencies to restrain as "well themselves as followers, untill a further course be "taken by legal examination, where the afpersion began, "the same being in their Opinions the best and the only "way to prevent the danger, &c.

Sometimes, if the Parliament be fitting, the King acquaints the Lords, and then departing, who having had Conference with the Commons, conclude of a Message to be fent to the Ambassadors, (either by requiring an account of the matter or confining of them) the Persons to be fent, the two Speakers of both Houses, with some convenient number of either, having their Maces, or Enfigns of Offices born before them to the Ambassadors Gates, and then forborn; and then requesting speech with them, let them know that a Relation being made that day in open Parliament of, &c. they were deputed from both

Sir Henry

Vide Sir Robert Cotten's postbum. and

Houses ..

Houses, the Great Council of the Kingdome, to the which by the fundamental Laws of this Nation, the Chief care of the Kings fafety, and the publique peace and quiet of the Realm is committed; and that they were no less the High Court of Justice, or Superseders to all others, for the examining and punishing all attempts of fo high a nature, as, &c. if it carry truth, and having executed their Commission, concluded that the Houses. to shew that Reverence which they bear unto the dignity of his Mafter, by their Meffage, they two that never are imployed but to the King alone, were at that time fent, &c. and if the Houses shall upon return of their Speakers conceive their answer (if it be a matter that requires it) to be such as may justly deserve their being confined, they then make an address to his Majesty to confine them to their Houses, restraining their departure untill the Prince or State, whom they reprefent, be acquainted with their offence: And fo it was done in 44 H. 3. to the Popes Legates in England, and 28 E. I.

The Parliament not fitting the Secretaries of State may fignifie the like, if occafion, &c.

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The Opinion of the Lord Coke 4. Inst.

IX. If a Foraign Ambassador, being a Prorex, commits here any crime which is contra Jus Gentium, as Treafon, Felony, Adultery, or any other crime which is against the Law of Nations, he loseth the Priviledge and Dignity of an Ambassador, as unworthy of so high a Place, and may be punished here as any other private Alien; and not be remanded to his Soveraign but of courtefie.

X. But if any thing be malum prohibitum by any Act of Parliament, private Law or Custome of this Realm, which is not malum in fe Jure Gentium, nor contra Jus Gentium, an Ambassador residing here, shall not be bound by any of them, but otherwise it is of the Subjects of either Kingdome; for if a French Merchant, or Spanish Merchant trades or imports any prohibited Goods, he must at his peril observe the Laws of England; and so it was adjudged, Pafe. 33 Eliz. in the Exchequer, Tomlinson, qui tam versus Henry de Vale & al. upon the Stat. of 19 H. 7. Ca. 21. but if an Ambassador imports any prohibited Goods, è contra.

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XI. The Office of an Ambassador does not include a procuration private but publique, for the King his Master, not for any several Subject otherwise than as it concerns the King and his publique Ministers, to protect them, and procure their protection in forreign Kingdoms, in the nature of an Office and Negotiation of State; therefore their Quality is to mediate and profecute for them or any one of them, at the Council Table, which is as it were a Court of State; but when they come to fetled Courts, which do and must observe essential forms of proceedings, scil. processus legitimos, they must be governed by them : And therefore in the Case of Don Diego Serviento de Acuna, Ambassador Leger for the King of Spain, who libelled in the Admiral Court as Procurator General, for all his Masters Subjects, against one Jolliff and Tucker, and Sir Richard Bingley, for two Ships and their lading of divers kinds, of the Goods of the Subjects of the King of Spain generally, and not naming of them adduct ad Port de Munster, in the Proface of the Libel generally against them all, and then proceeds and charges them severally thus; That Folliff and Tucker Captain Pyrate, in alto Mare Bellico dictas Naves aggressi sunt, & per vim & violentiam, took them, and that they were adducte in partes Hibernia, and that they came to the hands of Sir Richard Bingley, and he converted them to his own use, (not faying where) and refuseth to render them being required, it was there held, that a Prohibition should go, for the matter is tryable meerly at the Common Law, and that fuch a Procuration was not good.

Don Alonso de Valesco Ambassador from the Catholique King, attached Tobaccoes at Land here, which one Corvero, a Subject to the King of Spain brought hither, and the Ambassador by his Libel supposed to belong to his Master, as Goods confiscated, as all others his Goods were. Sir John Watts the Plaintiff in the suggestion, pray'd a Prohibition, which was granted accordingly, for the property of Goods here at Land must be tryed by the

Hobart. fol. 71.

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Common Law, however the property be guided; and it was likewise rul'd, that if any Subject of a Forreign Prince bring Goods into this Kingdom, though they were confiscate before, the property shall not be que-Rioned but at the Common Law. Den Alfonso vers. Convero Mich. o Fac. Hob. 212. Hill. o Fac. upon the like Libel by Don Pedro Surega Ambassador for Spain.

Distingui. Lerme ac in re folent crimine. Vide Parutam lib. 10. ubi Rex Gallie banc ob causam iratus Belli ac Pacis lib. 18. 5. 4, 5, 6, 7.

Rex facilne metu regium nuncium populi Romani Quiritum vala comitelque meos : Yet an Eiectment hath been brought and left at the house of the Ambassadour, and it was allowed good, and conceived no breach of their priviledge in the Cale of Monfieur Colbert, for York

XII. Whether an Ambassador hath Turisdiction over his own Family, and whether his House be a Santhuary * for all that fly into it, depends upon the concession of him with whom he relides, for this belongs not to the Law of Nations †; and it hath been feen that an Ambaffador hath inflicted punishment on his own Servants pacatur. Vide and Vallals, as the Muscovite did here in England; but tundem lib. 11. for Fugitives that fly into their Houses, nay, their own † Grot. de jure Servants, if they have greatly offended, cannot be drawn forth by force, without a demand and refusal; which when done, it is then become as an offence in them.

XIII. Most certain by the Civil Law, the moveable Goods of an Ambassador, which are accounted an accession to his Person, cannot be seized on, neither as a pledge, nor for payment of a debt, nor by Order or Execution of Judgement, no nor by the King or States leave where he relides; (as some conceive) for all coaction ought to be far from an Ambassador, as well that which toucheth his necessaries as his Person, that he may have full fecurity; if therefore he hath contracted any debt, he is to be call'd upon kindly, and if he refuses, then Letters of Request are to go to his Master; † so that at last, that course may be taken with him as with Debtors in another Territory; to some this may feem hard, vet Kings, who cannot be compelled, want not Greditors: but the Lord Coke feems to be of another Opinion, * for as to Contracts and Debts that be good Jure Gentium, he must answer here.

House. Mich. 28 Car. 2. in Banc. Reg. + Grot. de Jure Belli ac Pasis, lib. 2. cap. 18. * Co. Inft. 4. 153. Certain it is, that none dareth prefume to meddle either with their Persons, Goods or Servants, without leave had, the contempt of which has been puhill'd with imprisonment.

> XIV. If an Ambassadour commits any private Out rage against one of the Princes Subjects, with whom he refides,

resides, unless it be to defend the Dignity of his Charge. or of his Malter, it has been conceived by fome not to be justifiable before the Prince with whom he resides: for, fay they, there is a great difference between the Dignity and Authority of the Prince in the Countrey of another Soveraign; for, fay they, he may well retain his Dignity, but not his Authority: usually injuries of that nature being done, they have admitted debates at a Council of State, where the Soveraign, with whom the Minister of State hath resided being satisfied, that reparation ought to be made to the party injured, he hath been ordered, or at least requested, to comply with the fame.

XV. But on the other hand, if any private Quirage be committed by the Subjects of that Prince with whom he resides upon his Person, the offenders may be subje-Sted to punishment : And the Queen of Sweden having made the Incomparable Grotius (after he had escaped by Providence out of Prison, and by a greater from his Countrey-men) her Ambassador for that Crown with Lewis the 13th, with whom he refided at Paris, coming one day memor. Grotisfrom St Germans, the Secretary of Ceremonies being in the Coach with him, it chanced that in one place as they passed, a great number of People were in the way seeing of an Execution, his Postillion and Coach-man driving boldly through the company, the Archers then attending the Execution with short pieces, (concerned somewhat angerly that the Execution was disturbed) made after the Coach, shot his Postillion and Coach-man, and through the Coach, even through his hat: the matter coming to be examined, the King ordered three or four of them to be hanged, but that Good Man first pardoned them himself, and then obtained the Kings.

XVI. The Republique of Venice imployeth generally more Amballadors abroad than any other State, and they are as other Princes be, Ordinary and Extraordinary; the Commission of the Ordinary continueth for three years, but he which relides at Constantinople is not call'd Ambassador, but Baike, residing there perpetually; and that Republique allows him a greater provision to support his Grandeur, than to any other, and by the Laws of Barbseate In

Venice.

Venice what foever he expends is allowed him upon his accounts, without any examination; the which no other of their publique Ministers of State have like priviledge.

By the Laws of Venice there can be no Extraordinary Ambassador imploy'd, unless they have been Ambassadors formerly, and upon their return are strictly examined of their comportment in their Legation, and are to discover + what Presents they have received from the Prince or State to whom they are fent, the concealment

+ Bodinus de Republ. lib. 3.

of which is of a dangerous confequence.

* Fac. Aug. Thuanus lib.27. In Vita Auguflini Barbadico Duke of Ve-

Nor may any of their Ambassadors receive any preferment * from any other State during their Legation: The Patriarch of Aquileia dyed, and Hermolao Barbaio being there Ambassador for that Republique, the Pope conferred on him that Ecclesiastical Dignity, and made nice, An. 1486. him a Cardinal, which being known at Venice, notwithstanding he was a Person of great desert, and had given notice to the Senate, rich, well allied, and had good Friends, they fent express command that he should refign the Patriarch (hip, otherwise they would take from his Father the Procurator ship of St Mark, and confiscate all his Estate.

But if fuch Ambassadors have received any Present, Gift or Reward from any Forraign Prince or Republique, and fuch Ministers of State are thought worthy Paulus Paru- of retaining the fame, fuch a Grace must pass by the fufta in Hist. Ve- frage of the Senate, to oblige them more to the benevolence of the Republique, than to the bounty of any Forraign Prince.

mice, lib. 7.

CHAP. XII.

Df the Right of belibering Perlons fled for Protection.

I. Where Superiours may become cul- | Y. Such Persons have been refused pable for the Crimes of their Sub-

II. Of punishment, in whom lodged, and where offences to another Prince feem to be excepted.

III. What is meant by the words delivering up, and how construed in divers Countries.

IV. To what Crimes it can ex-

to be delivered up, and on what reason deny'd.

VI. Admitting not compellable, whether he ought voluntary.

VII. Of Persons running away with the Revenue, whether to be delivered up by the Persons into whose Countrey they fled.

TAthers are not bound for the fault of their Children, nor Masters for those of their Servants; nor Princes for the Actions of their Subjects, unless they become partakers in the crime; the which may be done ding for the in two respects, by sufferance and receipt; therefore if Magnets to T. Princes shall suffer their Subjects by Pictures or Libells Quintus, and the Legates to abuse another Nation or Common-Wealth, It is the with him befame as if they should Authorize it. Brutus to Cicero, fought them How can you make me guilty? Yes, well enough, if it were with tears; ne in you to binder it; but receipt may admit of some further scrutiny.

II. Common-Wealths being Instituted, it was agreed, quemque perithat faults of particulars, which do properly belong to cuto facere, Litheir own Society, should be left to themselves and their vy lib. 40. Soveraigns to be punish't or connived at, as they judged

most fit.

Yet that Right is not so absolutely left to them, but Offences, which tend to the destruction of Society or Government, whereof Treason is the chiefest, may seem to be excepted; for if a Subject shall commit an act, tending to the subversion of his Soveraign's Government, the same is an offence that's subject to an universal punishment, i.e. it is to be punished every where, and the Governours

Zeno interceunius amentiam civitati assignarent, suo

Governours into whose Territory such fly, seem to have a Right of profecuting for the offence: in civil actions, which tend to Commerce that supports Society, the Subject of forraign Princes for Debes contracted in their own Countrey, may obtain justice in another; by a stronger reason it is thought that Princes or Republiques that have received publique injuries, have right to require punishment for the indignity that is offered them. at least for that which tended to the subversion of their Governments. III. The question is illustrious, Opinions grounded

For the knowledge of the cause ought to preceed the dedition; non decet bomines dedere causa non cognita. Plutarch in his Remulus.

Act of Parliament, 12 H. 7. Co. Inst.fo. 180.

5 H. 8. Vide Lord Herbert's Hift. of Henry the Eighth. Pipin receiv'd and would not deliver up those that fled Newstria, oppreft by Tyranny. Fredsgar. in Reb. Pep. An. 1188.

on feveral great Presidents have been both waves produced, generally it hath been held that those Kingdoms where the Offenders are fled, ought to do one of the two, either punish them according to their deferts being called upon, or leave them to the Judgement of the offended State, others the contrary; most certain it is by the delivering up, is understood, to leave him to the legal Judgement of that Prince or State, whom he hath offended: And fuch was the Declaration of Ferdinando King of Spain, who had been often requested by Henry the Seventh to deliver up Edmund de la Poole Earl of Suffolk his Subject, then fled for protection to that Prince's Countrey, but was alwayes refused; but being continually importuned by promifes that he should not Attainted by be put to death, caused the Earl to be delivered up to him who kept him in prison, and construing his promife to be personal to himself, commanded his Son Henry after his decease to execute him, who in the fifth Year of his Reign upon cold blood performed the fame: But the malice of that Politique Prince the Father, and the uncontroulable Will of the Son are Presidents but of small force; the example of which not long after gave the French King occasion to beware of trusting the latter with a Subject of his on the like occasion, for Cardinal Poole not many years after, coming Ambassador from to him out of the Pope to the French King, they both being then in Amity, and Henry the Eighth in League with the latter, but in Enmity with the first, requested to have the Cardinal delivered up, but could not prevail, being doubly armed, as the Ambassador of a Soveraign Prince (for such is

is the Pope) and in the Territory of a Forreign State.

The Ilraelites require of the Benjamites to deliver up the wicked Men, the Philiftins Sampson; Cate gave his vote that Cafar should be delivered to the Germans. for spoiling them without just cause; not are nocent Persons injured, if they are either deliver'd up, or punished; yet does it not thence follow that they make be delivered up or punished: the Romans delivered up ces, which are those that had done violence to the Carthaginian Am. universal Sanbaffadors.

IV. But then, and as in this last, so in all other the been raken offender must have committed some publique offence, * in Lustrania. as Treason; for most certain it extends not to private Ferdinand Le injuries, because there is no President that ever a War Chamberlain was begun for fuch, though they may contribute much; was taken by but for those which tend to the subversion or ruine of a Church and Countrey, they often have been delivered up; Jugartha burnt, for forof Bocchus in Saluft, So shalt thou at once free us from the sad cing a Noble necessity of prosecuting thee for thy Errour, and him for his Virgin. Ma-Treason. And by most Writers it is agreed, that such riana lib. 18. Offenders must either be delivered up or punish'd, the of Burguads election is left to their choise, into whose Territory they delivered up are fled; though some have held, that in case of prote. to Lewis the ction + the Sanctuary for fuch unfortunate Persons, Prin- 11th the Earl ces do make their Countrey an Afylum.

Yet out of Churches beyond Seas for private offenchuaries, the offenders have Charles Duke of St. Paul Constable of France, who

flying to some of his own Cities, obtained Letters of Safe-Conduct to come and commune with the Duke, in order to the making his peace with the King, but the Duke after he had him in custody, delivered him to the King of France, who immediately after cut off his head, Phil. Comines lib. 4. c. 12. † Ludovicus Pius the Emperous received those that fled to him from the Roman Church, as appears by his Decree Asso \$17. and Luther himself did not want Princes to protect him from the fury of Saine Peter's Chair. Vide his Colloquiums printed in London, Anno 1663.

T. Quintus Flaminius, sent Ambassadors to Prusias King of Bithynia, for the procuring the delivering up the brave but unfortunate Hannibal, who accordingly being feized on, I will now, fayes he, deliver the Romans. of that fear which bath so many Years possest them; that fear which makes them impatient to attend the death of Livy. Vid. Siz an old Man: This Victory of Flaminius over me, which lib. 5. cap. 6. am difarmed and berray'd into his hands, shall never be 5. 2.

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numbred among the rest of his Heroical deeds : No, it shall make it manifest to all the Nations of the world, how far the Ancient Roman Virtue is degenerate and corrupted; for such was the Nobleness of their Fore-Fathers, as when Pyrrhichus invaded them in Italy, and was ready to give them Battel at their own doors, they gave him knowledge of the Treason intended against him, by Poyson, whereas those of a latter Race have imploy'd Flamineus, a Man who hath heretofore been of their Consuls, to practife with Prusias, contrary to the Honour of a King, contrary to his Faith given, and contrary to the Laws of Hospitality, to slaughter or deliver

up his own quest.

V. What ever the Opinion of those Writers have been, the practice of latter Ages have feemed to incline otherwise. Queen Elizabeth demanded Morgan and others of her Subjects fled into France, that had committed Treason against her; the answer of the French King was, Si quid in Gallia machinarentur, Regem ex jure in illos animadversurum; sin in Anglia quid machinati fuerint, Regem non poffe de eisdem cognoscere, & ex jure agere; omnia Regna profugis effe libera Regum interesse, ut sui quisque Regni libertates tueatur, imo Elizabetham non ita pridem, in fuum Regnum Mountgumerium, Principem Condæum, & alios è Gente Gallica admisife, &c. And they were never delivered up: But the like was not returned by the King of Scotland, for he promifed that he would transmit Ferniburst and the Chancellor too, if they were convicted by a fair Tryal; the Cry of the late ROYAL MARTYR's Blood justly procured some of those Reeicides to be delivered up by them of Holland.

24 Elizabethæ Cambd. fol. 35.

Vide Camba. Anno 1585.

Anno 1660.

Princess gave the Scots a more equitable answer. when they demanded Bothwell, fhe answered, that the would either render

VI. Most certain it is, if War be threatned to a Na-That politick tion or People, if they deliver not up the Offender. though perhaps he is innocent, and that fuch is the malice of his enemies that they know they will put him to death, yet he may be deferted; especially if that Nation or Kingdom is inferiour to the others, but then the fame ought not to be done rashly: The Italian Foot that for fook the unfortunate Pompey, before all was loft, being affured of Quarter from the Victorious Cafar, were condemned by most that reported the Story of that day.

him up, or fend him out of England. Cambden Anne 1593

Pope Alexander (in that mortal Feude between him and the Emperour Frederick, who favoured Octavian the Antipope) fled disguised to Venice, the Duke and Senute being jealous that the Emperour would demand him, fent an Ambasiy to the Emperour to endeavour a Mediation and Peace, which was no fooner offered, but the Emperour broke forth into a Rage, bidding them go home. faying, 'Tell your Prince and People, that Frederick the Roman Emperour demands his Enemy, who is come to them for fuccour, whom if they fend not prefently bound hand and foot with a fure Guard, he will proclaim them Enemies to him and the whole Empire, and that there is neither Alliance or Law of Nations which shall be able to free them from revenge for fuch an injury, to profecute which, he is refolved to overturn all Divine and Humane Laws, that he will fuddenly bring his Forces before their City, and contrary to their expectation, plant his Victorious Eagles on the Market-place of St Mark, This Message being faithfully delivered, the Senate decreed Arms, Arms; and while they were preparing, news was brought that Otho, the Emperour's Son and General of the Cafarian Fleet, was entered the Gulph in Vita Tibawith seventy five Gallies; the most valiant and religious stand Cynei Tebastiano Cyani resolved to meet him, and having encountred them on the Coast of Istria, defeated Otho and all his Naval Forces, taking forty eight Gallies, Otho their Admiral and the rest either burnt or destroyed; he returned in triumph for Venice, and not long after Frederick became converted, that Heaven fights the Battels for the Innocent, and on his knees begg'd pardon of the Pope.

Lewis the 11th of France, required by Ambassadors of Philip Duke of Burgundy, the delivery up of Sir Oliver de la Marche; who being a Burgundian, had wrot (as was conceiv'd) fomewhat against the claim of the French to feveral Territories, upon a publique Audience at Lifle they were answered by Duke Philip, That Oliver was Steward of his House, a Burgundian by birth, and in no refpect Subject to the Crown of France; notwithstanding if it could be proved that he had faid or done any thing lib. I. cap. Is against the Kings Honour, he would see him punished ac-

cording as his faults should deserve.

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Hift. Rep. Ven.

Phil. Comines

But admitting that fuch an Innocent Person ought not to be delivered up, whether he is bound to yield. himself, by some it is conceiv'd he ought not, because the nature of Civil Societies, which every one hath entered into for his own benefit, doth not require it. from which it follows that fuch Perfons are not bound to that by Right, properly fo called; yet it doth not follow, but in Charity he feems bound to do it, for there be many offices not of proper Justice, but of Love, which are not only performed with praises, but also cannot be omitted without blame; and fuch indeed is the act of fuch a Persons voluntary yielding up himself, preferring the lives of an innocent multitude before his own. Cicero for

Idem de fini-P. Sextus, If this had happened to me failing with my Friends bus 2. Vir bonus & sapiens, in some Ship, that Pirates surrounding us should threaten & Legibus pa- to fink us, except they would deliver me, I would rather rens, & civilis have cast my self into the Sea, to preserve the rest, than officii non ignarus, utilitati to bring my Friends either to certain death, or into great danger of their life : The Request of the Noble Strafford omnium plus quam unius ali- is fresh in our memories.

cuius aut sue

consulit. And in Livy there is a most excellent saying of some Molosians, Equidem pro Patria qui lethum oppetissent sape fando audivi : qui Patriam pro se perire aquum censerent, bi primi inventi funt. Livy lib. 49.

VII. But whether fuch an Innocent Person may be compelled to do that which perhaps he is bound to do, may be a question; Rich Men are bound by the precept of Mercy to give Alms to the Poor; yet cannot be compelled to give: It is one thing when the parts are compared among themselves; another when Superiours are compared to their Subjects, for an equal cannot compel his equal, but unto that which is due by right strictly taken; yet may a Superiour compel his Inferiour to things which vertue commands; in a Famine to bring out provisions they have stored up, to yield him to death that deferts his Colours, or turns coward, to mulct those that wear excessive apparel, * and the like. Plutarch Phoe Phocion, pointing to his dear Friend Nicocles, faid, Things were come to that extremity, that if Alexander should demand him, he should think he were to be delivered up : It lib. 7. Satius judicemus effe paucos aliquos mala ferre, quam immensam multitudinem.

+ Leg. Defert. + Co. Inst. 2. fol. 199.

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hath feem'd that fuch an Innocent Person might be deferted and compelled to do that which Charity requires; but the late ROYAL MARTYR feem'd of another Opinion, when he came to dye, in the case of the British Proto-martyr Strafford.

The Son of Pompey was fo worthy a Son of fo great a Father, that he contended

with Anthony and Augustus, about the Empire of the World; this Pompey entertaining Anthony and Augustus in his Gally, the Captain which commanded it, demanded leave of him to weigh Anchor, and to carry away his Guests, and to make prisoners of his Rivals ! he answered him, that he ought to have done it without telling him of it, and should have made him great, without having made him forsworn : Certainly, an honest Person will never be of the mind of this Captain; therefore in such extremitles, Councellors either for high advantages, or in the great necessities of their Prince, should serve their Masters with their Estates and Goods, but not with their Honour and Conscience.

VIII. Persons that have wrong'd or defrauded Kings of their Revenue, especially in England, upon Letters of Request to those Princes whither they have fled, have

been delivered up.

Some Florentine Merchants of the Society of the Seriscobaldi, being made Collectors and Receivers of the Kings Customes and Rents in England, Wales, Ireland and Gascoigne, running away with those Moneys, together with all their Estates and Goods for Rome, the King fent his Letters of Request to the Pope; desiring that they might be arrefted, their Perfons and Goods, and fent C. Rot. Rome The ver to fatisfie him the dammages he and his Subjects had 4 E. 2. M. 17. fullained by them, promising not to proceed against them Dorso. to the loss of their limbs and lives. Upon which Letters the Pope feized on their Goods, and not long after the Rot. Rome 4 Kings Writfor the feizing of their Persons, for answering E. 2. M. 16. 4: of other frauds and injuries.

The like was done for one Anthony Fazons, who had received five thousand pound of this Kings Moneys, and running away with it to Lorraine, the King writ to the fame Dike, desiring that fearch might be made, and his M. 13. Boile: Person seized upon in every place within his Territories, pro Regge till he should fatisfie the faid five thousand pounds.

CHAP. XIII.

Of Contribution pap'd by Places Deuter, to both Armies in War.

I. considerations general, touching the same, and the chief matters that are objected by those that Scruple thereat.

II. The case stated generally in the question propounded to our Saviour of paying Tribute to Ca-

III. In the payment of Contribution to an Enemy, what is neces-Sary to be distinguisht in the beginning of a War.

IV. Of a second distinguishment drawn out of the firft, of fuch payments, when a War is actually

V. where a Man payes, but miflikes the cause, whether excusable, the war not yet actually formed in the place.

VI. ubere a Countrey is fully pof-

fest, whether payment then is

lawful.

VII. Of the State of those that live on Frontiers, their condition considered as in reference to procure their peace by Contributions.

VIII. Of interdiction by him to places from whom Faith is owing. Contribution not withflanding being play'd, whether the same creates an offence in them.

IX. Of the genuine construction of fuch interdictions according to the true intention of the same.

X. Of the impunity and punishment that such innocent offenders may be subjected, in case of being questioned for the contempt by their right Governours.

THe most Excellent Grotius having most incomparably treated on, and cleared all the important objections against a Just War, together with the incidents of the fame, yet this one main of Contribution or paying to both Armies, whether lawful, he has not touched in any other words but these, Quod sub tributo utrique parti prastando factum diu in Belgico, Germanico, bello nure Belli ac Pa- per vidimus; est que id consent aneum mori veteri Indorum : † and fo cites a faying in Diodors Siculus, * of the Peace that those People maintained in their possessions by reason of fuch Contributions, but to many Persons that instance of this without further scrutining, proves infufficient; for that there are many who not finding this liberty in their Consciences, unnecessarily choose rather to give up their Bodies to restraint, and to abandon their whole means of

+ Grot. de 74cis lib. 3. cap. 12. S. 4. 1. 2. * Lib. 2.

of subsistance in this World, both for themselves and their Children, (which ought not fondly to be done, unless we would be worse than Insidels, as St Taul saith) they ground their resolution on this reason, that they know not whether the Monies they give may not furnish to the destruction of many Innocents, and perhaps the Just Magistrate; yea, and the total subversion and ruine of their Countrey, Liberty and Religion: and therefore though Men give and bestow what they please with their own; yet in such cases they may not; therefore it may not be impertinent for to examine whether these be necessary scruples in themselves, and such as admit of no exception of liberty, or whether those scruples be reasonable, or indeed meer scandal.

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II. The Scribes and Pharifees fought two wayes to entrap Our Saviour; one was as if he had blashed moully taught a new Religion, and a new God, (viz. himself) they hoped the People would be provok't to stone him for this, according to the Hebrew Law: ** Dist. 12. The other was, to bring him within the compass of Treafon, as if he could not lead great Multitudes after him, without trayterous designs; but this gin failed too, because the Multitude which followed him, was alwayes ready to desend him. However, when he was at Hierusalem, where the Roman Troops and Prator were, they thought they had him sure, by propounding this subject

to him: Is it lawful to vay Tribute to Cafar? which was as much as to fay, We, who are descended from Abraham, and are the peculiar People, to whom God hath given the large Priviledges of the Earth at home, to bath our felves in Rivers of Milk and Honey, to have full Barns and many Children; yea, that GOD himfelf will be adored in no other place of the World but at this our Hierusalem, and that abroad we should triumph over the Barbarous and uncircumcifed World by virtue of that Militia, which he never ordered for any but our felves; how are we then in duty or conscience to submit now to the Ordinances of the Uncircumcifed Romans? or what right can he have to exercise Supream Jurisdiction over the priviledged Seed of Abraham, by levying of raxes'

taxes on our Estates and Lands, which GOD himself laid out for us, by which means the Emperour and Senate hold this very Temple in flavery, and infult over our very Consciences and Religion, by defiling our very Sacrifices with the mixture of impure Blood; which as they are the price of our Blood, and a Tribute far above Cafars, (payable in no other place but this Temple, which GOD himself built) so our Blood ought not to feem too dear to be facrificed for the liberty of these; and though the Roman State could pretend, yet what can this Cafar pretend? Every Man's Conscience knows that it was but the other day he usurpt over the Senate, in which resides the true Jurisdiction of Rome; and if that were otherwise, yet how can he pretend to a Title, unless poyson be a pedigree, or violent usurpation a just Election, by which he who is but the greatest Thief in the World, would now pass for the most Soveraign and Legislative Prince? How then are we in conscience obliged to pay Tribute to this Cafar? Though those Lawyers thought in their Consciences that they were not to pay it, and that Our Saviour likewife, as Jew, thought fo too; yet they supposed he durst not say so much in the crowde; nor yet deny it by shifting it off with silence, lest the Roman Officers should apprehend him: But when Our Saviour shewed them Calar's Face upon the Coyn, and bad them Render to Cafar that which was Casar's, and to GOD that which was GOD's: His anfwer ran quite otherwise, not as some would have it, that by a fubtilty he answered not to the point proposed, for then the sense of the whole Text would found very ill in fuch terms, viz. If there be any thing due to Cafar, pay him it, and if any thing is due from you to GOD, then pay it likewise. This had been a weakening of GOD's Right for Cafars, and to have left a desperate doubting in a necessity: 'Tis beyond all cavil, that Our Saviours Opinion was positive for pay-Matth. 22. 20. ing of Tribute to that Cefar; because de facto he did pay it, and the plain reason of it appears evidently in this his Answer: Casar's Face was upon the Coyn, that is to fay, Cefar by Conquest was in possession of that Coyn, by possessing the place where he obliged them

to take it: Coyning of Money being one prerogative of Soveraign Power, †

III. But to come more close to the question, whe. fol. 16, 17. ther Contribution may lawfully be pay'd, perferre & inferre bellum; the one is active, and properly at the beginning of a War, and in a place where yet no War is, and where its cause only, and not its effects can be confidered; in this case every thing ought to be very clear for warrant of a Man's Conscience, because of the calamities which he helps to introduce, and is in some manner the Author of: the other is Passive, and there where War or the power of War is actually formed, which is

IV. Secondly, we are to distinguish betwixt that which cannot be had, nor the value of it, unless we actually give it, and that which may be taken by the Law of War

whether we contribute yea or no.

the case of this discourse.

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V. Most certain it is, though a War be not yet actually formed in a place, yet a fcrupling conscience, which likes not the cause, may be excused in contributing to it in this one case, viz. if some number of Men able to take what they ask, demand (with an armed power) the payment of a certain fumme to be imployed in War, then in fuch a case, the Man, whom we suppose, may pay it as a ransome for his life, or give it as a Man doth his purse, when he is surprised * in the High-way; because to this Man it is as much as if the whole Countrey were Proceedius in the possest with an armed power: So several Dutchies and third of Gotth. Segniories dependant on the Empire, do in the present War of Totilas, between them and the Crown of France, pay Contributi- when he beon at this day.

But if the Person or Countrey be not for the time in the interim per omfull possession of him, whose cause he scruples at, and that nem Italiam nihe or they have not a probable fear of extream danger, nil mali intunor as probable affurance that without his help, the thing ita, ut foliti demanded, nor its value can be taken from him or them, erant, terram then there's little excuse remains for the act, because the perpetuo securos very act (which his conscience dislikes) participates more colere, modo ad

of action than of passion.

VI. But where a Man or City is fully possest by an perferant: This, faith Cassidore, invading power (be the same just or unjust) from whom is the greatest he praise, 12.15.

fieged Rome, faith, 'Agricolis lit, fed juffit eos ipsum Tributa

1 44 E. 3. 14. 4 H. 4. 3. Co. 3. Inft. f.68.

he or they cannot fly, nor remove their fubstance; most certain the payment of Contribution is no gift, no more than he, (as above) who with his own hands, being fet upon by Pirats or Robbers, puts his purse into their hands; for the Law calls not that a gift, + nor excuses the party from taking it: And though the parties may imploy the same to the destruction perhaps of Innocents, and the like; yet that is an action out of their power, that give as far as winds and tempests are, to which two, as we contribute nothing, fo we cannot be fcrupulous in our Consciences concerning their bad effects; nor is the same * C. 2. de Treug, repugnant to the Canon Law *, (which teach ous humanity, and the imitation of all their vertues,) and therefore persons, whose lives are innocent and harmless, will not have subjected to danger or plunder, which hardly can be avoided without Contribution or Tribute.

de Pace. Nic. Damasco

VII. Again, those that live on Frontiers, whose conditions are more ticklish and deplorable, because they are not fully possest, nor taken into the Line of either party, these live as it were in the Suburbs of a Kingdom, and enjoy not the fecurity or priviledges of others, yet fuch Persons may lawfully contribute to both, for though they be but partly possess by one, and by the other, in respect of their suddain abandoning them. vet both Parties have the power of destroying them wholly, wherefore those former reasons which justifie those fully possest, do also acquit the payments of these, for their condition here is more calamitous, feeing they are really but tenants at will, exposed to a perpetual alarm, and that both parties wound one the other, only through their fides, as those this day that are scituate between France and Germany, for being perhaps Neuters in the War, they are in that case by the Law of Arms to shew themselves equal to both, + in permitting Exemplum no- of passage, in affording provisions for the Armies, in not relieving the belieged.

bile vide apud Pautam lib. 8. Grotius lib. 3. tap. 17.

VIII. Nor can the interdiction of him, to whom fuch owe Faith and Obedience, any wayes create the fame an offence, fince the declared wills of our Governours cannot make all those of our acts sins, when we obey or fubmit to that power, which is against our wills, (as

much

much as against theirs, and it may be with more of our mifery) hath divested them of the power of their Rights, and deprived us of the power of their Government; and by the Laws of War, they who have overcome, should Govern those whom they have overcome; and therefore whatfoever is exacted by the Conquerours, may justly be

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pay'd by the Conquered. * And fince Princes by their commands cannot change Ture Belli ac the nature of humane condition, which is fubject natu- Pacis leg. c. 8. rally to those fore-mentioned changes; it would feem exceeding hard to oblige us to almost moral impossibilities, and though those Political Commands were as Laws, yet doubtless they ought not to be obliging, but according to the Legislative rule, which is cum sensu humana imbecillitatis, this is that which usually is call'd the presumptuous nit ut quod will + of a Governour, or the mind of a Law: for in extream necessity it is to be presumed, that both their Wills pure fecisse exiproceed from the rigour of what they have declared, fimetur. rather than by holding to that which is their supposed Right, introduce certain miseries and confusion: without D. de just. & receiving any benefit thereby to themselves. Nor could jur. they of Vericht, and others of the Conquered Cities in Holland, abandoned afterwards by the French, entirely preserved from destruction, be condemned by their Confederates, for the fumms by them promised to the Enemy for the preservation of the same.

Neither are such Commands or Interdictions without their Laws of Sense and profit, though they be not positively obeyed, * for Leagues; for thereby Governours shew to all the world, that they re- such being nounce no part of their Right, no, though it be there made, the same where they cannot exercise any part of their just power.

IX. Now the true intentions of fuch Commands or In- fame King, or terdictions is, that the Enemy should not by any means his successor be affisted or strengthned; but if such prohibitions should be driven out be obeyed; nay at fuch a time, when they and all their fubstance are absolutely possest by the Enemy; most certain fuch commands dash against themselves, and the one Kingdom recountermands the other; for if they refuse to submit in mains, although fuch a case, then they do that which advantages their Ene- he hath lost the mies : Because at that time they will take all, whereas in Possession case of submission they ask but a part.

* Grotius de

quisque ob tutelam corporis sui,

And that is apparently evinced, by the remaines, although the of his Kingdom, for the right of the Grot. de Jure

Belli ac Pacis.

X. In all Wars there are alwaies fome, by whose difaffections, Enemies gain more than by their compliance,

just as Physicians do by distempers.

And although, by after variety of successes, the Just Governour should recover that place, which so submitted to the power of their Enemies, and for that reason should punish those that were plyable to extream necessity; yet it follows not upon that, that they who so conformed, sinned, or did that which was absolutely unlawful; for we well know that reason of State oft calls for Sacrifices, where there is no fault to explate: Ostracisme and Jealouse make away those who are known to deserve most, but in strict right (which is the term of this question) the Just Governour ought to look upon them as more unfortunate than faulty.

Republica idem est nimium, & nihil pereri.

CHAP.

brians, and of English CHAP. XIV. seales to .IXX

Of the Paval Wilitary part.

by a good Commander.

II. The Love that naturally proceeds from the Mariners to those that are valiant and generous.

III. Princes in prudence ought not to liften too much to the complaint against Commanders.

IV. Of the faults generally considered in Souldiers and Mariners.

V. Of the punishments that generally wait on such offenders.

VI. Of Drunkennes, Swearing, and other such fort of impieties, not to be suffered in Fleets.

VII. Spies, if lawful to use them by the Laws of Nations, but being deprehended are to suffer death; and how they are to be dealt withal by the Laws of England.

VIII. It is not lawfull for a Friend or Neuter to relieve an Enemy, and Persons so offending, how punisht.

IX. Ships taken as prize, the Ship Papers, and other matters concerning the same, are to be preferved.

X. Of things taken and acquired in War, bow the right of them becomes vested in the Captors, and bow that is to be understood by the Law of Arms.

XI. To fleat the Cables or other furniture of the King of England's Ships, bow punishable at this day.

XII. Ships surrendred and voluntarily surrendred, how to be dealt with, and whether to those that fball resist it, if entered by force, quarter may be refu-

1. The advantage that Princes have | XIII. Ships of war generally ought not to be yielded, but if entered or disabled, whether they may not accept of quarter, standing with the Oath called Sacramentum Militare.

XIV. Of obeying Orders, the Same ought punctually to be followed; and if broken, though the Act succeeds well, whether the same Subjects not the Actor to punishment.

X V. Of the obligation incumbent on Commanders and Souldiers to behave themselves valiantly, and the right of flaying an Enemy, where lawful.

XVI. Ships bow obliged by the Law of Arms for the affiftance of one another, and of the duty of those that have Fleets under their

Convoy.

XVII. An Enemy beaten ought to be purfued, and how far it is lawful to flay such flying with their lives in their hands by the Laws of Arms, and bow the recking sword ought to be governed.

X VIII. Persons exempted from the Sword, by the Laws of Nature, Nations, Civil and Canon, and by the Municipal Laws of

Some Countries.

XIX. Mutining how esteemed, valued and punished at this day by the practice of Armies, and by the

Laws of England.

X X. Whether it be lawful to decoy the Subjects, Souldiers, or Mariners of an Enemy, to forsake bis Prince or General, and to bring over his Men, Ships, or Arms, and where by Law they may be received ;

received; and bow such deserters may be punished by the Laws of Nations, and of England.

XXI. Of Seducers, Meffage Carriers and Decoyers of Souldiers, how to be handled by the Law of

XXII. Of those that Shall disobey or frike their Superious Officers,

how punisbable.

XXIII. Of mutining, and those that (ball act in the fame bow punifbed, though they have a just canfe of complaint.

XXIV. Of the care incumbent on Commanders and Masters of the Great Ships, as in reference to XXIX. Of Triumphs.

their Safety, and the punishment of wilfull burning and destroying

XXV. Of the general offences at Sea, bow punished.

XXVI. Court Martials born erected. and what operation their Judgements bave, and upon whom.

XXVII. Judges, and Advocates Power as in reference to give an Oath, and the Admiral's Power bow limited to the punishing of offences.

XXVIII. Of maimed Souldiers and Mariners, and the provisions that the Law makes for them at this day.

A N Excellent General is an evidence of the Fortune of a Prince, and the Instrument that occasions the happiness of a Kingdom; and therefore when GOD makes choise of a Person to repair the disorders of the World, or the good of a particular State, then is his care shewed in the furnishing him with necessary Principals to undertake great matters; the thoughts are put in his Soul by that eternal Commander to execute, he troubles and confounds his Enemies, and leads him as by the hand to Victories and Triumphs: And one of the greatest expedients whereof he ferves himself for this purpose, is to raise unto him Excellent Men, both in Courage and Conduct, to whom he communicates his care, and who help him to bear the weight of Affairs. Alexander had never conquered Asia, or made the Indies to tremble, but for Epheltion, Parmenio and Clytus; Cafar gained many a Battel by his Lieutenants, and the fairest Empire of the world, which Ambition and Evil of the Times had divided into three parts, was reduced under the Dominion of Augustus, by the valour of Agrippa; Justinian triumphed over Persia. and destroyed the Vandals in Africa, and the Goths in Italy, by the aid of Bellifarius and Narcete: And it is most certain, that Noble Commanders are the Glory of their Princes, and happiness of the People; on the other hand, base, cowardly and treacherous Generals, are the shame of the one, and the despair of the other.

II. Hence

II. Hence it is, that Souldiers and Mariners draw their Lines, either of love even to the mouth of Canons with a good General, or mutiny and hate to the Main-yard end against one that is bad, for to obey them who are not their Soveraigns when they do them hurt, when they infult and are cruel in cold blood, and base, cowardly, or treacherous in Battel, is a fad necessity for them, and a hard effay of patience; yet must they be obeyed, and the Souldiers and Mariners must not rebel or repine, but submit till the Soveraign redresses the misfortunes.

III. Again, a Prince ought not to liften too much to the mutinous demands of the Crew, or any others, whose ambition watches their ruine, whereby to conceive anger against his Commanders; for it is easier to purge out the choler and discontent that is got under the hatches, than to provide Commanders of Conduct, Courage and Faithfulness to govern their Expeditions. Bellifarin, that most Excellent Commander, who had no other crime than his Reputation, and was not culpable, but that he was powerful, having conquered Persia, subdued Africa, humbled the Goths in Italy, led Kings in Triumph, and made appear to Constantinople somewhat of Old Rome, an Idea of the Ancient Splendour of that proud Republique; Procupius His. after all his Eminent Services, this Great Perfon is aban- Vandal. in Vidoned to Envy, a suspicion ill grounded destroyes the va- ta Bellif. Jue of so many Services, and a simple jealousse of State wipes them out of the memory of his Prince: but he rests not there, for the demeanor had been too gentle, if cruelty had not been added to ingratitude; they de- Vide Sir Walter prive him of all his Hopours, they rob him of all his Raleigh, lib. 5. Fortune, they take from him the use of the Day and in that whole Light, they put out his Eyes, and reduce him to the com- Paragr. the inpany of Rogues, and the miserable Bellisarius demands a grattude that Charity, even that Bellifarius the Chiefest General of his Age, and the Greatest Ornament of the Empire, who after fo many Victories and Conquests, accompanied with fo Brave and Nohigh and clear a Virtue, and in the midft of Christendom, ble General & reduced to fo abject and low a mifery.

Nor was this cruel and hasty reckoning of Justinian let flip, without a cruel payment, for Narces, who was larly enumera-

c. 6. §. 2. And hath been shown by Princes to many a Commander, there particuthere particuas ted.

as well a Successor in merit as in Authority to Bellifarius. who having notice of a disdain, conceived likewise against him upon a single complaint, resolved not to expose himself as a Sacrifice to their malice; and therefore better to shake off the yoke than stay to be oppressed, foon spoiled the affairs of Justinian, for the Gaths revolted, and Fortune would not forbear to be of the party. which Narces follow'd, nor to find the Barbarian, where fo brave a Captain was engaged. Therefore, not one or many faults are to be liftened to against Commanders, but patiently heard and redressed, but not to disgrace or lose them; for such having committed a fault, yet being admonished by Love, may endeavour by future Services to make recompence by some Noble Exploit; but difgraced, become Instruments often of danger and ruine to their Superiours.

IV. Souldiers and Mariners faults are either proper

to themselves, or common with others.

Those are common with others, which other Men fall into, and are corrected with like ordinary proceeding as other crimes of like nature, as Man-flaughter, Theft,

Adultery, and fuch like.

Those are proper which do properly appertain to the Naval Military part, and are punished by some unusual or extraordinary punishment: As are thefe, not to appear at the over musters or calling over the Ship, to ferve under him he ought not to ferve, to vage or wander long from a Ship-board, although he return of his own accord, to forfake his Fleet, Squadron, Ship, Captain, Commander, or Officer, to leave his standing to fly over to the Enemy, to betray the Fleet, Squadron or Ship, to be disobedient to Superiour Officers, to lose or De Caftrenfi pefell his Arms, or steal another Man's, to be negligent in culio, & C. de his Officer's Command, or in his Watch, to make a Mutiny, to fly first out of the Battle, and the like, which are very frequently fet forth in the Titles of the Digest and Code of Military Affairs, and other like Titles which accompany them.

> Arrian, who wrote the Life of Alexander the Great, obferves, Every thing is counted an offence in a Souldier, which is done contrary to the common Discipline, as to be negligent, to be stubborn, to be slothful. V. The

none, & C. de veft. Militari.

mit. l. 12. C.

de erogatione

militaris an-

V. The punishment wherewith Souldiers and Mariners are corrected, are those corporal punishments, or a pecuniary mulct or injunction of fome service to be done. or a motion or removing out of their places, and fend-

ing away with shame.

By Capital punishment, is understood for the most part Death, or at least beating with Cat with nine tayls, as they commonly term it, Ducking, Wooden horfe, Gauntlet, and fuch like, unless happily it be pardoned, either for the unskilfulness of the Mariner or Souldier, or the mutiny of the Crew or Company, being thereto drawn by Wine, Wantonness, or for the commiseration or pity of the Wife and Children of the party offending; all which is left to the discretion of the Lord Admiral, and others

the Supream Commanders, or Captains.

VI. It is necessary that in Armies and Fleets all manner of impiety should be prohibited, especially that of Swearing and Cursing; for such are sins so foolish, that they unawares help Men into damnation, rendering Men worse than Beasts, by how much the more they court that vanity of fin without any of the appendant allurements, which other vicious actions are accompanied with; the fame in the end teaching Men to difavow GOD in their Discourse and Actions, by their intemperate and inconsiderate invoking him in their Oaths: Against such, as also against those that shall give them- 13 car. 2. cap. felves up to Curfing, Execrations, Drunkenness, Unclean- 9. Artic. 2. nefs, or other fcandalous actions in derogation of God's Honour, and corruption of good manners, Fines and Imprisonment, or such other punishment may be inslicted on them by a Court-Marshal, * which is now reduced * By Orders of to the forfeiture of one days pay; but for Drunkenness, His Royal the fame extends not to Commanders, or other Com- Highness. mission and Warrant-Officers; for they upon conviction before the Admiral shall be rendred uncapable of their Command.

And a Lyar convicted on Ship-board, shall be hoisted Artic. 1. upon the Main-stay with four braces, having a Broom and Shovel tyed to his back, where he shall continue an hour, every Man crying, a Lyar, a Lyar, and a week following he shall clean the Ship's Head and Sides without board, according

Artic. 2.

according to the ancient practice of the Navy, if he receives greater Wages then for an able Sea-men, than half a day's pay.

Livy lib. 2. cap. Corn. de Sica-THES PUR.

VI. By the Laws of Nations, Spies may be fent to fur-5. ult. ad Leg. vey the Enemy's Force, Fleet, Station or Squadron, and make discovery of whatsoever may give advantage to the Persons sending : So Moses and Joshua did into the Holy Land; on the other hand being deprehended, they are to be put to death, as Apian faith; and by the Laws of England, if any Officer, Souldier or Mariner, in actual Service, and in pay in His Majesties Fleet, or any other Person in the same, shall give, hold, or entertain any intelligence to or with any King, Prince or States Stat. 13 Car. 2. being enemy to, or any Person in Rebellion against His

cap. 9. Art. 3. Majestie, His Heirs and Successors, without leave or Authority from the King, Admiral, Vice-Admiral, or Officers in chief of any Squadron, they are to fuffer death: Now, the bare receipt of a Letter or Message from an Enemy, will not make a Man subject to the penalty of this Article; and therefore the subsequent Article explains the precedent, in which it is provided, that if any inferiour Officer, Mariner, or Souldier shall receive any Letter or Message from any King, Forreign Prince, State, or Potentate, being an Enemy, or on their behalf; and if such Person does not reveal the same within twelve hours; having opportunity so to do, and acquaint the Superiour Commander with it, such Person is to suffer death; so likewise, if fuch Superiour Officer, or Mariner being acquainted therewith by an inferiour Officer, Mariner or other, or fuch Superiour Officer, Commander or Mariner, in his own Person, receiving a Letter or Message from any fuch Enemy or Rebel, shall not in convenient time reveal the same to the Admiral, Vice-Admiral or Commander of the Squadron, he shall fuffer the like pain of death, or fuch punishment as a Court-Marshal shall inslict: Now, Spies are put to death fometimes justly by those that manifestly have a just cause of Warring by others, by that licence which the Law of War granteth; nor ought any Person to be moved with this, that such being taken, are punished with death; for that proceeds not from their having offended against the Law of Nations?

Aruic. A.

tions, but from this, that by the same Law every thing is lawful against an Enemy : And every one as it is for de searies nu. his own profit, determineth either more rigourously or gently, but that Spies are both lawful and practicable, there is no question; for at this day by the general instructions of Fleets, there is alwayes out of each Squadron fome Frigats or Ships appointed, to make discovery of the Enemy, and upon fight to make faile, and to stand with them; in order to the taking cognizance of their Force, as well Ships of War as Fire-ships, and in what posture they lay; which being done, those detecting Frigats are to fpeak together, and to conclude on the report they are to give, which done, they return to their respective Squadrons; such Ships in such service are not obliged to fight, especially if the Enemies Force exceed them in number, or that they shall have an apparent advantage.

VIII. Again, it is not lawfull for any, be he Friend or Neuter, to relieve an Enemy, much less for a Souldier or Mariner in pay, to Supply him that conspires the destru- nullus. Leg. 2. ction of my Countrey, is aliberality not to be allowed of. He de Judais Com is to be accounted an Enemy that supplyes the Enemy licolis. with necessaries for the War; and therefore by the Laws of War is fo to be esteemed; and by the Laws of En- Goth. I. gland, if any Person in the Fleet relieve an Enemy or Rebel in time of War, with Money, Victuals, Powder, Shot, 2. cap. 9. art. 50 Armes, Ammunition, or any other fupplyes whatfoever,

directly or indirectly, he shall suffer death.

IX. Ships being affaulted and taken as prize, all the Papers, Charter-parties, Bills of Lading, Pass-ports and other Writings whatfoever that shall be taken, seized or found aboard, are to be duely preserved, and not torn or made a ay; but the very Originals are to be fent up entirely and without fraud to the Court of Admiralty, or to the Commander appointed for that purpose, in order to the condemnation of the Prize, upon pain of the Captors losing their share in the Prize, and also subject to such other punishment as a Court Marshall shall think fit.

X. The Right of taking of Spoil was approved of GOD, within these natural bounds which have been already

Tacit. Hiff. 5

Bartol. Leg.

Proceeding

Stat. 13 Car.

Artic. 6.

Leg. Naturalem S. ult. D. de Atq. rerum dom. tit. de rerum div.

Artic. 7

* By the donation of His Majesty.

Artic. 8.

already mentioned, is further evinc't by the appointment of GOD in his Law concerning the Acquisition of Empire over the conquered, after refusal of peace. All the spoil thereof shalt thou take unto thy self, and thou shalt eat the spoil of thine enemies, which the LORD this GOD hath given thee : Hence it is, that things taken from the Enemy, presently become theirs that take them by the Law of Nations, and fuch acquisition is called Natural, for not any cause, but the naked fact is considered: And thence a Right foringeth; for as the Dominion of things began from Natural possession, and some print of the same remains in the things taken in the Land, the Sea, and the Air; fo likewise of things taken in War; but though this gives a Right to the Captors. vet that must be understood to the Soveraign or to the State that imploy'd them, and not to themselves; but if they have any share of the Prize, the same proceeds by the condescension or grant of the Soveraign, which may be enlarged or abridged as occasion ferves; and therefore by the Laws of England, Ships of War having a Prize, the Goods and all manner of Lading is to be preferved, till Adjudication shall pass; but that is to be understood, where the Ship voluntarily yields: but Ships whom they shall assault, and take in fight or prize, the pillage of all manner of Goods and Merchandizes (other than Arms, Ammunition, Tackle, Furnitures or stores of fuch Ships) as shall be found by the Captors, upon or above the Gun-deck of the Ship, become theirs *; but this is to be understood where such Prize may lawfully be possest; for there are times when such are not to be meddled with, and therefore it is against the Rules of War in fight, if some of the Enemies Ships are there difabled; yet those Ships that did so disable them, if they are in a condition to purfue the Enemy, cannot during the fight take, possess, or burn such disabled Ships, and the reason is, lest by so doing some more important fervice be loft, but they are to wait for fuch booty, till the Flagg-Officers shall give command for the fame.

Vluzzali King of Algier, in the famous Battel of Lepanto, having behaved himself very valiantly there against the Christians, that he destroy'd several of their

Galleys,

Galleys, and others, he took amongst the rest the Galleys of Pietro Bua of Corfa, of the Prior of Messina, and Ludovico Tipico of Trahu, and Benedeto Soranza, the which he towed after him before the Battle was compleated: but that getting proved the loss both of the one and the other, for the Turks out of covetouiness of the plunder, or otherwise thronging into them, occasioned their Hist. Repub. Vis taking fire, in which the Victors in those slames became net. fol. 1273 Victims, and after follow'd the total rout of the Otto- 128. man power.

XI. It is almost impossible, that in Ships of War: which in these dayes carry so considerable force in Men, but there will be fonte amongst them that have heads of knavery, and fingers of lime-twigs, not fearing to fleal that from their Prince, which is applicable only for the good of their Countrey; fuch fort of Night wolves when caught, are to be feverely punished; and therefore to steal artic. & or take away any Cables, Anchors, Sails, or any of the Ships Furniture, or any of the Powder or Arms, or Amunition of the Ship, subjects the offender to the pains of death, or to fuch other punishment as the quality of the offence shall be found by a Court-Marshal to deferve:

XII. By the ninth Article, Forreign Ships or Vessels crasus persua taken as Prize, without fighting, none of the Captains, ding cyrus not Masters or Mariners being Forreigners, shall be stripped to give up Lyof their cloaths, or in any fort beaten, pillaged, or evil dia to be pila entreated; and the Perfons fo offending are obliged Men, tells him; to render double damage : this Law most expresly doth Non meam, in not extend to those that obstinately shall maintain a quit, non res Fight; for most certain, by the Law of Arms, if the meas diriples & Ship be boarded and taken, there remains no restirction, nibil enim ad but that of charity; and if a Ship shall persist in the pertinent: tud engagement, even till the last, and then yield to mercy, funt, ina illi there has been some doubt, * whether quarter ought to perdent, Heroda be given to fuch; (for they may ignorantly + maintain lib. 1. with courage a bad cause:) but Captives, and those that June Belli 1.494 yield or desire to yield, there is no danger; Now, that \$60. fuch may be justly killed, there must be some antece- + D. & c. de dent crime, and that fuch a one as an equal Judge Juris & fattle would think worthy of death; and fo we fee great fe-ign. verity shew'd to the Captives and those that have yield-

laged by his

pliants, except they be just.

* The Syracucused for that they flew the Wives and Children of Hycatas, because Hycetas had flain the Sifter and Son of Dyon. Plutarch, Timon, & Dione.

† In England when the Admiral would have the Van of the Fleet to Admiral did

generally put head (that was

Princes indeed ed; or, their yielding on condition of life not accepted; are Gods, but if after they were convinced of the injustice of the War. neither do the they had nevertheless persisted with hatred or cruelty; if Gods hear the they had blotted their Enemies Name with unfufferable prayer of Sup- diffraces; if they had violated their Faith or any Right of Nations, as of Ambassadors; if they were fugitives: But the Law of Nature admits not taliation, * except against the very individual Person that hath offended: fans were ac- nor doth it suffice, that the Enemies are by a fiction conceived to be as it were one Body; though otherwife by the Laws of Nations, and by the Laws of Arms, and at this day practifed, in all Fights, the small Frigots, Ketches and Smacks, are to observe and take notice of the Enemies Fire-Ships, and to watch their motion, and to do their best, to cut off their Boats, and generally the Persons found in them are to be put to death, if taken, and the Vessel if not taken, destroy'd; and the reafon why the extremity of War is used to such, is, that by how much the mischief is the greater by the act of fuch Men if executed, by fo much the punishment is aggravated if taken, and quarter deny'd them by Law of War.

XIII. Every Captain or Commander upon fignal + or order of Battel, or view, or fight of any Ships of the tack first, the Enemy, Pirat, or Rebel, or likelihood of engagement, they are to put all things in the Ship in fit posture for a Fight, as the breaking down the Cabins, clearing of aboard the U- the Ships of all things that may impede the Souldiers the fluff on the in the preferving the Ship and themselves, and endamafore-top-Maft- ging the Enemy; and every fuch Commander or Captain

when the Red Flagg was not abroad.) But if the Red Flagg had been abroad, then the fore-top-fail was to be foured a little, and the Union-Flagg was to be foread from the Cap of the fore-top-maft downwards. When the Reer of the Fleet was to tack first, the Union-Flagg was put abroad on the Flagg-staff of the Mizon-top-Mast-head, upon which two fignals the Flagg-ships were to continue the same fignals on their Ships, till the same was answered. When the Admiral would have all the Ships to fall into the Order of Battel prescribed at the Council of War, the Union-Flagg was put on the Mizon-peake of the Admiral's Ship, upon fight of which the Admirals of the other Squadrons were to answer it by doing the like fignal. When the Admiral would have the other Squadrons to make more faile, though himself shorten faile, a white Enfign was put on the Enfign-staff of the Admiral's Ship: Instruction first of May 1666. But yer Signals may be altered or changed as often as it shall please the Admiral to think the same necessary and convenient

are in their own Person, and according to their Place, to hearten and encourage the inferiour Officers and common Men to fight valiantly and couragiously, and not to behave themselves faintly, under the disgrace of being casheered; and if he or they yield to the Enemy, Pirat or Rebel, or cry for quarter, he or they fo doing, shall fuffer the pains of death, or fuch other punishment as the offence shall deserve. Now, though Souldiers or Mariners have obliged themselves faithfully to serve in the Expedition or Navy; yet that is to be understood no further than his or their power to do his utmost in his or their Quality: for though the obligation for the Service be taken in the strictest terms of undergoing death and danger; yet it is to be understood alwayes conditionally as most promises are, viz. if the action or pasfion may be for that Fleet or Princes advantage; and therefore if the Fleet or Squadron is beaten, and the Ships are disabled, and left scarce without any to defend them, now the Souldiers or Mariners remaining can do no more for their Prince than die, which indeed is to do nothing at all, but to cease for ever from doing any thing either for him or themselves: in those straits Lipsus de Mil. therefore it is not repugnant to their Oath, called Sa. Rom. I. I. dial. tramentum Militare, to ask quarter or strike, and having Polybius exbegg'd a new Life and taken it, they are bound in a new preffeth the and just obligation of Fidelity to those whom they Oath thus, obwere bound to kill few hours before; neither can the temperaturus Prince or General expect by virtue of their former obli- fum, & factugation to him, they should kill any in the place where mandabitur ab the quarter was given : However, this Fidelity hath not Imperatoribus, its inception, from the time of taking quarter; but when justa vires; the Battel is over, and that time which is termed cold and such, sayes blood; for without all controversie, if a Ship be board ed Mility per ed, and the Quarter is given, yet if while the Fight lasts, Sacramentum. the Persons captives can by any possibility recover their Liberty and Ships, they may by the Law of Arms justly acquire the fame.

And fince impunity is granted to such unfortunate descritors, yet it must be apparently evident and fully, proved, that they were reduced into a condition beyond all hope in the Battel : and therefore the feet that for-

6, & 4. And

fook the Unfortunate Pompey before the field was loft, were justly condemned for the breach of the Roman Difcipline and Law of Arms: And therefore the Article hath not politively declared death only, but added, or fuch other punishment as the offence shall deserve, which provision leaves the Action to be judged and punished by a Council of War, who know best what's to be done in cases of that nature; however, a base or cowardly yielding, or crying quarter, is to be punished with death, and that without mercy.

Xenoph. Cyr. Rom. 39. 6 Marcello. Vide in Tit. Ships of War.

XIV. The obeying of Orders hath in all Ages been Plutarch. Queft. in mighty esteem : Chrysantus, one of Cyrus's Souldiers. being upon his Enemy, withdrew his Sword, hearing a retreat founded; but this comes not from the external Laws of Nations; for as it is lawful to feize on the Enemie's Goods, fo likewife to kill the Enemy, for by that Law the Enemies are of no account; but fuch obedience proceeds from the Military Discipline of Several Nations: By the Romans, it-was a Law + noted by Modestinus, that whofoever obey'd not his Orders, should be punish't with death, though the matter fucceeded well; now he also was supposed not to have obey'd, * who out of Order, without the Command of the General-entered into any Fight.

+ Leg. desertorem. D. de re Milit.

* Livy lib. 7. Manliani Imberia.

For if fuch Liberty were lawful, either Stations would be deferted, or (Licence proceeding) the Army, Fleet, or Squadron would be engag'd in unadvised Battels, which The Order of by all means is to be avoided. M. Capello, a Venetian Gentleman of an Ancient Extraction, having the charge of the Guarding the Venetian Gulph, * met with the Barbary Fleet, whom he fo affaulted, that he burnt and took divers of them; among the rest the Admiral Galley of Algier, (a Vessel of vast bigness) which he brought with him away, and she remains at this day a Trophy in the Arfenal of Venice; the fervice although Noble and Honourable, and fuch as brought renown to the Republique, yet in regard it was an Action exceeding his Commission,

preserved, and in all cases they are to endeavour to keep in one line as much as may be; and though they have beaten fome of the Enemy, yet

Battle is to be

must they not pursue a small number, before the main of the Enemy be beaten or run: Nor ought they in chafing, chafe beyond fight of the Flagg, and at night all chafing Ships are to return to the Flagg. Jast. 22, 23. in 1. May 1666. * Hist. of

the Reipub. of Venice, fol. 170, 171.

he was adjudged to punishment: (but his great Merit and Alliance preferved his Life) fuch an exact obedience that Seigniory expects to be pay'd to her Orders, be the fuccess never so Glorious: And by the eleventh Article, every Captain, Commander, and other Officer, Seaman or Souldier of any Ship, Frigot or Vessel of War, are duly to observe the Commands of the Admiral, or other his Superiour, or Commander of any Squadron, as well for the affaulting, and fetting upon any Fleet, Squadron, or Ships of the Enemy, Pirat or Rebels, or joyning Battle with them, or making defence against them, as all other the Commands of the Admiral, or other his Superiour Commander, the disobeying of which subjects them to the pains of death, or fuch other punishment, as the quality or neglect of his offence shall deferve.

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X V. Again, every Captain, and all other Officers, Mariners and Souldiers of every Ship, Frigot, or Vellel of War, shall not in time of any Fight or Engagement, withdraw or keep back; but on the other hand, they are to come into the Battle, and engage, and do their utmost Artic. 12 endeavour to take, fire, kill, and endamage the Enemy, Pirat or Rebel, and affift and relieve all other his Confederate Ships; and if they shall prove cowards, they are to be dealt with as cowards ought by the Law of Arms, which is to fuffer death: But circumstance of things may make alteration of matters, therefore there is added, or other punishment as the circumstance of the of-

fence shall deserve, or a Court-Marshal think fit.

There are fome Offices to be done, even to them from whom you have received an injury; for revenge and pu- cicero Offic. 1, nishment must have a measure; and therefore the issues & 2. of the Roman Wars were either mild or necessary. Now when killing is just in a Just War according to internal Justice may be known by the examining the causes or end of the War, which may be for the confervation of Life and Members, * and the keeping and acquiring of * Grot. de Ture things usefull unto Life; now in the affaulting of Ships, Belli at Pacis it happens that one is flain on purpose, or without pur- lib. # 6.2. §. 1. pose: on purpose no Man can be flain justly, unless either for just punishment, as without it we cannot protest and defend our Life, our Goods, our Countrey, &c.

Artic. 11.

Misericordia infortuniis debetur: at qui deliber ata frientia male agit, non infelix, fed injuffus : And cicero hath a faying out of Demo thenes; We must shew compassion to those whom fortune, not their own deeds have made miserable. Scipio Amilianus at the overthrow of Carthage, proclaimed that that would. Polybius, vide Tacitus Annal. 12. reb. Franc. I. & Hen. 2. Thucyd. lib. 2. * Cefar l. 2. de

+ Dinant in taken by affault, the town was rafed and burnt, and the priloners all put to death. mines 115. 2. cap. 1. ...

Bello Gallico. 1 + 6 3 5 . 13

That fuch punishment may be just, it is necessary, that he who is flain, have offended, and that fo much as may be avenged with the punishment of death in the Sentence of an equal Judge, be expected: now we must note between full injury and meer misfortune often intercedes fome mean, which is as 'twere composed of both; fo that it can neither be called the act of one knowing and willing, nor meerly the act of one ignorant or unwilling.

This distinction by Themistius is fully illustrated; Tou have made a difference 'twixt an injury, a fault, and a misfortune; although you neither study Plato, nor read Ari-Stotle, yet you put their Doltrine into practice; for you have not thought them worthy of equal punishment, who from the beginning perswaded the War, and who afterward were carried with the stream, and who at last submitted to him, that now feem'd to have the highest power; the first you condemned, the next you chastised, the last you piti'd: Most certain to spare Captives or Prisoners of War, is a command of goodness and equity; and in Histories they are often commended, who when too great a number prove they should flee burdensome or dangerous, chose rather to let them all go than to flay them, or detain them, though for Ranfomes; as the last Flemish Wars with England : so for the same canses, they that strike or yield up themselves are Vide Serran. in not to be stain, (though there is no provision made by Covenant.) In Towns befieg'd it was observed by the Romans, before the Ram had smitten the Wall; Cafar * denounceth to the Advatici, he would fave their City, if before the Ram had touched the Wall, they yielded; which is still in use in weak Places, before the great Guns are fired; in strong Places before an Assault is made upon the Walls; and at Sea, by firing one or Garmany, being two Guns, or hanging out the bloody Flagg, according as the instructions are: however, till there be an absolute yielding or quarter cry'd, by the Law of Arms, as well as by the above mentioned Article, every Commander and Souldier is to do his utmost, to take, fire, kill and endamage the Enemy, or whatfoever may tend thereunto.

XVI. By the Law of Arms; he deserves punishment who doth not keep off force that is offered to his fellow Souldier;

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Souldier; and though it hath been conceived, that if there be manifest danger, that he is not bound to come in to his relief: for fuch Commanders may prefer the lives in his own Ship, before those in another; yet that fuffices not; for every Souldier by the Law of Arms, is not only bound to defend, but likewise to assist and relieve his Companion: Now Companions are in two refpects, either those that are in actual service with such Souldiers, or those that are not, but only committed to their protection or Convoy, which are to be defended and guarded at the same peril and charge that a fellow Souldier is; and therefore all Ships that are committed on at the cost to Convoy and Guard, they are diligently and carefully of my own to be attended upon without delay, according to their Blood, and Instructions in that behalf: And whosoever shall be partake in his faulty therein, and shall not faithfully perform the same, de Ben. 2. 15. and defend the Ships and Goods in their Convoy without either diverting to other parts or occasions, or refuling or neglecting to fight in their defence, if they be fet upon or affailed, or running away cowardly, and fubmitting those in their Convoy to hazard and peril, or shall demand or exact any Money or other reward from any Merchant or Master, for conveying of any such Ships or other Vessels belonging to His Majesty's Subjects, shall be condemned to make reparation of the damage to the Merchants, owners, or others, as the Court of Admiralty shall adjudge, and also be punished criminally according to the quality of their offences, be it by pains of death or other punishment, according as shall be adjudged fit by that Court Marshal: Now, those Ships that are not under Convoy, but ingaged in fight, are faithfully to be relieved; and therefore if a Squadron shall happen to be over-charged and distressed, the next Squadron or Ships are to make towards their relief and affiftance upon a fignal given them; which is generally given in the Admirals Squadron by a Pendant on the Fore-top-Mast-head of any Flagg-Ship in the Vice-Admirals Squadron, or he that commands in Chief in the fecond place, a Pendant on the Main top Masthead, and the Reer-Admirals Squadron the like: but thefe fignals fometimes change, according to the wifdom and refolution

I will defend my Companidanger. Senec.

resolution of the Admiral. Again, Ships that are difabled by loss of Masts, shot under Water, or the like; so as they be in danger of finking or taking, the distressed Ships generally make a fign by wast of their Jack and Enligns, and those next to them are bound to their relief; but yet this does not alwayes hold place, for if the distressed Ship is not in probability of linking, or otherwise encompassed with the Enemy, the reliever is not to stay under pretence of fecuring them, but ought to follow his Leader and the Battle, leaving fuch lame Ships to the Stern most of the Fleet; it being an undoubted Maxime. That nothing but beating the Body of the Enemy can effectually secure such disabled Ships.

X V II. It is not enough that Men behave themselves valiantly in the beating of an Enemy, for that is not all, but the reducing of him into a condition to render right

either for damage done, or to render that which is right; which cannot well be done without bringing him to exi-But that is to gences and straits; and therefore if the Enemy, Pirat, or Rebel be beaten, none, neither through cowardize, negligence, or disaffection, ought to forbear the pursuit, and those of them flying, nor ought such either through cowardize, negligence or disaffection, forbear the assisting of a known friend in view to their utmost power, the breach of which subjects the offenders to the pains of death, or at least fuch punishment as a Court Marshal

> Empires are got by Arms, and propagated by Victory; and by the Laws of War, they that have overcome, should govern those they have subdued: Hence it is, that Generals having compleated a Conquest in a Just War, and in chase or otherwise have taken the Ships or Goods of the Enemy, have absolute power over the Lives, Estates, Ships and Things that they by force of Arms have acquired by the Laws of Nations.

> But yet in fuch Conquests, where the reeking sword knows no Law, that is, they are done impune, without punishment, because co-active Judges do grant them their Authority; t but yet fuch power may be exorbitant from that Rule of Right called Virtue; and therefore by the Law of War Captives may be flain, yet what Law forbids

Artic. 14.

be understood as in the XII. . of this Chap.

shall think fit.

Tacitus 2. Annal. Pom-Beins gravior remedils quam delicta erant.

not,

not, modesty prohibits to be done. Hence it is, that Generals do often restrain that power of killing; for though fuch Prisoners of War do fight for the maintenance of an unjust cause, and although the War is begun by a folemn manner; yet all acts that have their rife from thence, are unjust by internal injustice; so that they who knowing-Iy do perfift in fighting, + yet ought they not alwayes + Grotius de to be flain, according to that of Seneca; Cruel are they, Pacis, lib. 3. faith he, * that have cause of punishment, but have no mea- cap. 10. 6. fure : For he that in punishing goes further than is meet, * 2. De clem. is the fecond author of injury; and the principal rea- cap. 4. fon why mercy is often shew'd, is, for that Souldiers of fortune offend not out of any hatred or cruelty, but out of duty.

XVIII. Again, Generals in the measure of killing, look no further commonly than the destruction of those who by force of Arms oppose them; and though Ships or Cities are taken by affault, the which by the Laws of War fubjects every individual to the mercy of the Conquerour; vet Children, Women, Old Men, Priests, Schol- in Vita Camilli lars and Husband-men are to be spared; the first by the Livy lib. 1. & Law of Nature, according to that of Camillan, We have 5. Arms, fayes he, not against that Age which even in taking Cities is spared, but against armed Men, and this is the Law of Arms amongst Good Men; by which we are to + Grotius de note, that by the words Good Men, as is observed, + he Jure Belli ac means the Law of Nature) for strictly by the Law of Arms, the flavers of them are without punishment.

Now, that which hath place in Children alwayes that tences may be have not attained the use of Reason, for the most part prevails with Women; that is, unless they have committed fomething peculiarly to be avenged, or do usurp against Infants, Manly Offices, as flinging of stones from the walls, * pour- calumny it self ing down burning pitch and brim-stone, and the like bi- can find notuminous stuff, firing of Guns and the like, for it is a Sex that hath nothing to do with the Sword, that are capable of that clemency.

The like for old Men, whom Papinius observes, are not to Maximin. to be flain; fo for Ministers of Sacred things, even Bar- fol. 417. barous Nations, have had them in reverence and prefervation; as the Philifins enemies of the Jews, did to the mis Turba fines,

Pacis 1. 2. c. 11. who observes that many prefound out against Men of mature age, bur thing to fay, as being clearly innocents. * Herod. in Vi-Papin. nullis

Colledge Viet. D. locen

30. Lord coke's Comment on Charta, fol. 58. C. de Treuea de Pace.

Leg. execut. C. que res pign.

Vide 2. Inft.fol. 58. & Trin. 31 E. I. coram

1 Sam. 10. 5. Colledge of Prophets, whom they did not harm : and with those Priests are justly equalled in this respect, they that sam. 19. 18. have chosen a like kind of life, as Monks and Penitents, whom therefore as well as Priests the Canons follow-30 cap of Mag. ing in natural equity, will have spared. * To these are defervedly added those that give themselves to the Study of good Learning and Sciences useful to Mankind, be it in Universities, or other publique Schools or Colledges.

To these are added Tradesmen, + so likewise Merchants, which is not only to be understood of them that stay for a time in the Enemies Quarters, but of perpetual Subjects, for their Life hath nothing to do with Arms, and under that name are also contained other Work-Rege Rot. 127. Men and Artificers, whose gain loves not War, but Peace.

Again, Captives, and they that yield, are not to be flain, for to spare such is a Command of goodness and equiey, sayeth Seneca; * nor are Hostages to be destroy'd, according to that of Scipio; who faid, He would not shew his Displeasure on harmless Hostages, † but upon those that had revolted, and that he would not take revenge of the unarmed, but the armed Enemy: 'Tis very true, by the Law of Arms, if the Contract be broke for which they became Hostage, they may be slain, that is, the slayer * Grot. de Fine is without punishment : But yet some * conceive the flaver is not without fin, for that no fuch Contract can take away any Mans life, that is, I suppose an Innocents life; but without controverse, if those that become Hostage be or were before in the number of grievous Delinquents, or if afterwards he hath broken his Faith given by him in a great matter, the punishment of fuch may be free from injury.

XIX. Where offences are of that nature as they may feem worthy of death, as Mutiny, and the like, &c. it will be a point of mercy, because of the multitude of them to remit extream Right, according to that of Seneca, † The severity of a General shews it self against particulars, but pardon is necessary where the whole Army is revolting. What takes away anger from a wife Man? the nendo quam minando : fic enim agendum eft cum multitudine peccantium feveritat ; autem.

exercenda est in peccata paucorum. Gailinm de pace pub. bib. 11. cap. 9. 36.

multi-

* De Benef. s. cap. 18. † Livy lib. 28. The same saith Fulian in Nicetas.

Belli at Pacis. lib. 3. cap. 11.

+ 2. de Ira cap.

10. Quicquid

multis peccatur inultum

est. Magis mo-

multitude of Transoresfors. Hence it was, that cashing of Lots + was introduced, that too many might not be fub. + Vide Grot. iccted to punishment.

However, all Nations have generally made it a standing Rule in the punishment of Mutineers, as near as posfible to hunt out the Authors, and them make examples of *.

And therefore by the 15th Article, if any Man at any re Belli n. 59. time when Service or Action is commanded shall pre- lib 2. fume to ftop or put backwards or discourage the faid Service and Action, by pretence of arrears of wages, or upon any pretence of wages whatfoever, they are to fuffer death; and indeed the same ought to be without mercy, by how much the more they may raise a mutiny at a time when there is nothing expected but Action, and the shewing the most obsequious duty that possibly may Artic. 14 be; the breach of which may occasion the dammage of the whole Fleet, and being of fuch dangerous confequence, ought feverely to be punished: So likewise the uttering of any words of Sedition or Mutiny, or the endeavouring to make any mutinous Affemblies upon any pre- Arke. 19. tence whatfoever, is made death : And the very concealers of any trayterous and mutinous practices, deligns or words, or any words spoken by any to the prejudice of His Majesty or Government, or any words, practices. or defigns tending to the hinderance of the Service, and shall not reveal them, subject them to such pains and Artic. 20% punishments as a Court-Marshal shall think fit. And whereas in case of the offences committed against any of the Articles for the Government of any of His Majesties Ships of War, within the Narrow Seas, wherein the pains of death are to be inflicted, execution of fuch Sentence ought not to be made without leave of the Lord Admiral; this of mutiny is totally excepted, for fuch may be exe- Artic. 34. cuted immediately.

XX. It is not lawful for Princes or States to make of their Enemies Traytors, or to defert the Service of their Prince, or to bring over their Ships, Ordinance. Provisions or Arms; for as it is not lawful for any Subject to do the same, so likewise to tempt him; for he Grot. de Jure that gives a cause of sinning to another, sins also him. Belli ac Pacis

lib. 3. cap. 11i

* Victor de 70-

Leg. Tranfque rerum dom. Polyb. in excerp. Legat. 9. 28. 34. Menander Protector idem nos docet. * Phil. Comines lib. 4. cap. 12.

Artic. 16.

Artic. 17. Tertul. Apolog. 9. c. quando liceat, lib. 2. in reos majestatis miles. Vide Grot. lib. I. cap. 14. 6. Vide Hetley Rep. 235. 3 H. 8. cap. 5. + Livy lib. 2. lib. 3. 5. ult. ad Leg. Corn. Artic. 18.

felf; but if a Man will voluntarily, without any other impulse than his own, bring over the Ships or Armies, or deferts the Service of his Prince to ferve another; this, though a fault in the Defertor, is not in the Receiver. We receive a Fugitive by the Law of War, (faith Celsus *) that is, it is not against the Law of War to admit fugum D. de ac- him, who having deserted his Princes part, elected his Enemies; nor are fuch to be rendred, except it shall be agreed, as in the Peace of Lewis the 11th. * However fuch fort of Gamesters, if caught, are to be severely punished; and therefore it is provided, that if any Sea-Captain, Officer, or Sea-Man shall betray his trust, or turn to the Enemy, Pirat or Rebel, or run away with their Ship or Ordinance, Ammunition or Provision, to the weakning of the Service, or yield the same up to the Enemy, Pirat or Rebel, shall be punished with death; so likewise if any shall defert the Service, or the Employment, which they are in on Ship-board, or shall run away, or entice any other so to do, they are subject to the like pain of death. And by the Law of Nations, fuch defertors that run away from their Colours or Fleet before Peace proclaimed and concluded, all Persons of that Prince from & publicos bo- whom they fled, have a right indulged to them to execute fles omnis homo publique revenge.

XXI. By the Law of Nations, + Spies may be fent to view and furvey the Enemies Force, Fleet, Station, and make discovery of whatsoever may give advantage to the 1 H. 7. cap. 1. Persons sending, as is mentioned above; but being deprehended, they are to be put to death: and therefore if any Person shall come from, or be found in the nature of Spies, to bring any feducing Letters or Messages from de Sicariis pun. any Enemy or Rebel, or shall attempt or endeavour to corrupt any Captain, Officer, Mariner, or other of the Navy or Fleet, to betray his or their truft, or yield up any Ship or Ammunition, or turn to the Enemy or Rebel,

he shall be punished with death.

XXII. Souldiers and Mariners owe all respect and duty to their Superiour Officers; and therefore when they are in anger, they ought to avoid them; but above all, not to quarrel with, or give them any provoking Language: and therefore by the Law of Arms, a Souldier who who hath relifted his Captain, willing to chastise him, if he hath laid hold on his rod, is casheer'd, if he purposely break it, or laid violent hands upon his Captain, he dies : * And by the Laws of England, if any Person shall * Lee, milites. presume to quarrel with his Superiour Officer, he shall D. deve milit. fuffer fevere punishment; and if he strikes him, shall fuf. Rufus Ligi mifer death, or otherwise as a Court-Marshal shall adjudge litaribus, cap. the matter to deferve. +

X X I II. And though Mariners and Souldiers may have just cause of complaint, as that their victuals or provisions are not good, yet must they not mutiny or rebel, whereby to diffract or confound the whole Crew; but must make a civil and humble address to their Commander, that the same may be amended; and if the case be fuch, that the Commander cannot redress the same, by going to Port to fupply the exigencies, without detriment of the Fleet (as if ready to engage, or the like) they must like Men and Souldiers bear with the extremity, considering that it is better that some Men should periff, nay, the whole Crew in one Ship, than the whole Racon maximi Fleet, nay perhaps the whole Kingdom be destroyed: fol. 17. Privi-And therefore if any in the Fleet find cause of complaint legium non vaof the unwholesomness of his victuals, or upon other let contra remjust ground, he shall quietly make the same known to his Superiour, or Captain, or Commander in chief, as the occasion may deserve, that such present remedy may be had, as the matter may require; and the faid Superiour or Commander is to cause the same to be presently remedied accordingly; but no Person upon any such or other pretence shall privately attempt to stir up any disturbance, upon pain of fuch fevere punishment, as a Court-Marshal shall think fit to inslict.

XXIV. And as the Law doth provide that there be Artic. 24. no waste or spoil of the Kings provision, or imbezlement of the same; so likewise that care be taken, the Ships of War neither through negligence or wilfulness be stranded, split or hazarded, upon severe penalties. In fights Artic. 25 and when great Fleets are out, there are generally instructions appointed for all Masters, Pilots, Ketches, Hoyes, and Smacks, who are to attend the Fleet, and to give them notice of the Roads, Coasts, Sands, Rocks, and

+ Artic. 21.

the

the like, and they have particular stations allotted them, and orders given, that if they shall find less water than such a proportion, they then give a signal as they are directed to give, and continue their signals till they are

answer'd from the Capital Ships.

But in time of Fight, they generally lay away their head from the Fleet, and keep their lead, and if they meet with fuch a proportion of water as is within their directions, they are to give fuch fignal as they receive Orders for, and stand off from the danger; but the wilfull burning of any Ship or Magazine-store of Powder, Ship-boat, Ketch, Hoy or Vessel, or Tackle, or Furniture thereunto belonging, not apply the standard of the libe and standard or the standard or the standard of the libe and standard or the standard of the standard or the sta

Rebel, shall be punished with death,

XXV. There are other faults often committed by the Crew, the which the Law does punish, as a quarrelling on Ship-board, using provoking speeches tending to make quarrel or diffurbance, a murthers, wilful killing of any Man, b Robbery, Theft, c and the unnatural fin of Sodomy and Buggery, committed with Man or Beaft, all which, and all other faults and misdemeanors are punished with death, or according to the Laws and Customs in fuch cases used at Sea; d and when any Persons have committed any of the offences particularly mentioned in the Stat. of 13 Car. 2, cap. 9. and contained in the Articles or any others, and for the which they shall be committed. the Provost-Marshal is to take them into custody, and not fuffer them to escape e, and all Officers and Sea-Men are to be aiding and affifting to Officers for the detecting and apprehending of offenders.

Touching the punishments that the Roman Generalis used to their Souldiers, when they were at a Court Marshal found faulty, they were commonly proportioned according to the offence committed: Sometimes they were case, of which fort were those which only brand the Souldier with disgrace; others were those that came heavy on the Person or Body; to the first belonged a shameful discharging or casheering f a Mariner or Souldier from the Army, and generally lookt on as a matter of great disgrace, which punishment remains at this day for offences as well in England, as in most parts: A second

Artic. 27.

Artic. 23.

Artic. 28.

Artic. 33.

Artic. 31.

Ignominiosa dimissio. was by stopping of their * Pay, such Souldiers which * Fraudat. sifuffered this kind of mulct, were faid to be Fre dirmi, pendii. Rofin. for that Es illud diruebatur in fiscum, non in Militis sac- Ant. Rom. It culum; the which is, and may at this day be inflicted, especially on such as shall wilfully spoil their Arms, and the like fort of offences: A third was a Sentence enjoyn'd on a Souldier to refign + up his Spear; for as those + confee Haffawhich had atchieved any Noble Act, were for their greater ria. Honour, Hasta pura donati, so others for their greater difgrace were inforc'd to refign up that Military weapon of Honour: A fourth fort of punishment was, that the whole Cohort, which had loft their Banners or Standards, either in the Fields or at Sea, were inforc'd to eat nothing but Barley-bread, being deprived of their allowance in Wheat, and every Centurion in that Cohort had his Souldiers belt or girdle taken from him, which was no less disgrace among them than the degrading (among us) one of the Order of the Garter : for petty faults they generally made them stand bare-footed before the Gene- Godwin Antique ral's Pavilion, with long poles of ten foot in length in their Rom. fol. 127. hands, and fometimes in the fight of the other Souldiers to walk up and down with turfs on their necks, fometimes carrying a beam like a fork upon their shoulders round the Town; the last of their punishments was, the opening of a Vein, or letting them blood in one of their arms, which generally was inflicted on them who were too hot and bold.

The great Judgments were, to be beaten with rods. which was generally inflicted on those who had not difcharged their Office, in the fending about that Table called Teffera, wherein the Watch-word was written, or those who had stoln any thing from the Camp, or that had forfaken to keep Watch, or those that had born any false witness against their Fellows, or had abused their Bodies by Women, or those that had been punished thrice Lips de milit. for the fame fault, fometimes they were fold for bond- Rom. lib. 5. Slaves, beheaded and hang'd: But the last, which was Dial. 18. in their mutinies, the punishment fell either to Lots, as the tenth, twentieth, and fometimes the hundredth Man. who were punished with Cudgelling, and with thefe punishments those in England have a very near affinity.

as cleanfing the Ship, lofing pay, ducking in the water. beaten at the Capsons head, hoisted up the main-yard end with a shovel at their back, hang'd, and shot to death, and the like.

XXVI. The Admiral may grant Commissions to inferiour Vice-Admirals or Commanders in chief of any Squadron of Ships, to allemble Court-Marshals, consisting of Commanders and Captains, for the Tryal and Execution of any of the offences or misdemeanours which shall be committed at Sea; but if one be attainted before them, the fame works no corruption of blood or forfeiture of Lands. nor can they try any person that is not in actual Service and Pay in His Majesties Fleet and Ships of War.

37 H. 6. fol. 4,

13 Car. 2. cap. 9.

But in no case where there is Sentence of death, can the execution of the same be without leave of the Lord Admiral, if the same be committed within the narrow Seas; yet this does not extend to mutiny, for there in that case

the party may be executed prefently.

All offences committed in any voyage beyond the narrow Seas where Sentence of death shall be given upon any of the aforesaid offences, execution cannot be awarded nor done, but by the Order of the Commander in chief of that Fleet or Squadron, wherein Sentence of death was passed.

XXVII. The Judge Advocate hath power given by the words of the Statute, to administer an Oath in order to the Examination or Tryal of any of the offences mentioned in the Stat. of 13 Car. 2. Cap. 9. and in his absence, the Court-Marshal has power to appoint any other Person to administer an Oath to the same purpose.

This Statute enlarges not the Power and Jurisdiction of the Admiral any further, than only to the above-mentioned offences in no case whatsoever, but leaves his Authority as it was before the making of this Statute.

Nor does it give the Admiral any other or further power to enquire and punish any of the above-mentioned offences, unless the same be done upon the main Sea, or in Ships or Vessels, being and hovering in the main stream or great Rivers, only beneath the Bridges of the fame Rivers night o the Seas, within the * Jurisdiction of the Admiralty, and in no other place what soever.

15 R. 2.cap. 2.

XXVIII

XXVIII. As Souldiers and Mariners for the honour and fafety of the Realm, do expose daily their lives and limbs. To the Realm hath likewife provided for them, in case they survive and should prove disabled or unfit for Service, a reasonable and comfortable maintenance to Stat. 42 Eliz. keep them; the which the Justices of the Peace have cap. 3. power yearly in their Easter Sessions to raise by way of a Tax, for a weekly relief of maimed Souldiers and Mariners.

The maimed Souldier or Mariner must repair to the Treasurer of the County where he was prest, if he be able to travel; if he was not, then to the Treasurer of the County where he was born, or where he last dwelt by the space of three years; but if he proves unable to travel, then to the Treasurer of the County where he lands.

He must have a Certificate under the Chief Commander, or of his Captain, containing the particulars of his

hurt and Services.

The allowance to one not having been an Officer, is not to exceed ten pound per Annum;

Under a Lieutenant____IS, ? A Lieutenant-

Till the Mariner arrives at his proper Treasurer, they are to be relieved from Treasurer to Treasurer, and when they are provided for, if any of them shall go a begging or counterfeit Certificates, they shall suffer as common Rogues, and lose their Pensions: Over and above this Provision, His Sacred Majesty hath provided a further supplement for his maimed Mariners and Souldiers difabled in the Service, which is iffued out of the Chest at Chatham, and constantly and duly pay'd them; and for his Commanders, Officers and others that ferved aboard, he, of his Royal Bounty, hath given to those that bear the character of War, and purchase the same by their fidelity and valour, a pious Bounty called Smart Money, over and above their Pay.

XXIX. The wisdome of the Romans was mightily to be commended, in giving of Triumphs to their Gene- Vide Salmuth. rals after their returns, of which they had various forts; in Pancir. Leg. but the greatest was when the General rid in his Cha-ca. de Triumph. riot, adorned and crowned with the Victorious Laurel, pion. Halithe Seastors with the best of the Romans meeting him; carn. lib. 5.

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his Souldiers, (especially those who by their valour had purchait Coronets, Chains, and other Enfigns of Reward for their Conduct and Courage) following him; but what alas! could thefe to the more fober represent, any other but horror, fince the centers from whence the lines were drawn, could afford nothing but death, flaughter and defolation on those who had the Souls and Faces of Men: and if it were possible, that that Blood, which by their Commissions was drawn from the sides of Mankind, and for which they made those Triumphs, could have been brought to Rome, the same was capable of making of a Source great as their Tiber; but Policy had need of all its Stratagems to confound the Judgement of a Souldier by excessive Praises, Recompenses and Triumphs, that so the opinion of wounds and wooden legs might raife in him a greater esteem of himself, than if he had an entire body. To all are others something also must be found out handfomly, to cover wounds and affrightments of death; and without this Cefar in his Triumph, with all his Garlands and Musick, would look but like a victime: but what forrow of heart is it to fee pallionate Man, a ray of Divinity, and the joy of Angels, scourged thus with his own Scorpions? and so fondly to give himself alarms in the midst of his innocent contentments, as they of Holland but yesterday in the midst of their Traffique and Recreations did (by the denying His Sacred Majesty his Right, even that Right the which his Ancestors had with so much glory acquired,) pull on their heads a War, which that Mighty Republique by their greatest industry and wisdom hath not been yet able to quell: the cholerickness of War (whereby the luftful heat of fo many hearts is redoubled) thirs up the less of Kingdoms and States, as a tempest doth weeds and flimy feedment from the bottom to the top of the Sea, which afterwards driven to the shore, together with its foam, there covers Pearls and Precious Stones: and though the Cannon feems mad by its continual firing, and the Sword recking hot by its daily flaughters, yet no good Man doubts but they even they will weather out those storms, and in the midst of those mercile's Instruments, find an inculpata tutela, who love justice, exercise charity, and put their truit in the Great Governour of all things. CHAP.

CHAP. XV.

Of Salutations by Ships of War, and Berthant-Ben.

1. Of Salutation, how esteem'd by some in this later age.

II. Of the same pay'd in all ages as an undoubted mark of Soveraignty of this Empire.

III. Of those Seas where this right is to be pay'd to the King of En-

gland's Flagg.

IV. In what manner the King of England holds this Right, and by whom to be pay'd.

V. Of those that shall neglect or refuse to do the same, how punish and dealt withall.

VI. Where His Majesty of Great Britain's Ships are to strike their Flagg, and where not.

VII. Of the saluting of Ports, Cafiles, Forts, how the same is to be done, and on what terms.

VIII. Of Ships of war, their faluting their Admiral and Commanders and Chief.

IX. Of Ambassadors, Dukes, Noblemen, and other Persons of Quality, how to be saluted coming aboard and landing.

X. The Admirals of any Forraign

Nation, if met withall, bow to by

XI. Of the Men of War, or Ships of Trade of any Forraign Nation, faluting His Majesty's Ships of War; how to be answered.

XII. Of the faluting of His Majestie's own Forts and Castles; and when the salute ceases.

XIII. Of the objection that feems to be made against the necessity of fuch falutations.

XIV. Why Kingdoms and States attribute the effects not the cause of Rights to Prescription.

XV. That Kingdoms and Republiques ought not to be disordered for the defect of Right, in prejumption, and the objection in the 12. S. answered.

13. S. answered.

XVI. The inconveniency of war,
and the justifique causes of the
same.

X V I I. Of the causes not justissi-

XVIII. Of Moderation, and the utility of Faith and Peace.

I. A S Reforming Powers in all Ages made it their chiefest work to take down the great Colossus, and whatever else might be ombragions in the excrescencies of Civil Pomp; so we had some in this Age, who, by a new Art of Levelling, thought nothing could be rightly mended, and they planted, unless the whole piece ravelled out to the very end, and that all intermediate greatness between Kings and them, should be trumbled even to the dust, where all lying level toge-

ther as in the first Chaos, spades ought even to be put into the hands of those who were heretofore adorned with Scepters, all outward tokens of Honour and Esteem. which even from the first Institution of Society seemed by an uninterrupted stream to be continued down to Posterity, (even amongst the most barbarous Nations) was by them totally deny'd; the Hand, the Hat, the Knee, (being no other but outward figns of an inward refpect) being esteemed equal with Idolatry; but that unhappy brood, to whom whatfoever was crooked feemed ftreight, and what was dark to them appears light, are now not to be accounted Men, with whom the question may admit of a Debate whether Salutation is Innocent, Neceffary and Praife-worthy, fince nothing of Reason can be found in the foundation of their Religion, Honesty or Conscience. Therefore this Discourse is directed to Men.

II. First, it is evident by what hath been said, that the British Seas before the Roman Conquest, ever belonged to the Isle of Great Britain, they alwayes claiming and enjoying the sole Dominion and Soveraignty of the same, which afterwards accrued to the Romans by Conquest, and from them translated with its Empire to the Succeeding Saxon, Danish and Norman Successors, and in all the Reigns of those Princes there was alwayes some marks of Soveraignty pay'd, wherein the right of the same was evinc't and acknowledged.

III. Now those Seas in which this Salutation or Duty of the Flagg are to be pay'd, are the four circumjacent Seas, in which all Veslels whatsoever are to pay that Duty, according to the Custome of the same, and the Ordinance of King John. How far this Right is payable, appears in the fourth Article in the Peace made lately between His Majesty and the States General of the United Provinces, in these words:

That whatever Ships of Mettels belonging to the faid United Probinces, whether Mettels of War of other, or whether fingle of in Fleets, thall meet in any of the Seas from Cape Finisterre to the middle point of the Land Van Staten in Norway, with any Ships of Mettels belonging to His Majetty of Great Britain, whether those Ships be single of in great number, if they carry His Majetty of Great Britain's Flagg of Jack, he asogesaid Dutch Messes by Ships shall strike their Flagg and lower their Lop-sail, in the same manner, and with as much respect as bath at any time, of in any place, been sometly practiced towards any Ships of His Majesty of Great Britain, of His Predecestors by any Ships of the States General, of their Predecess.

IV. Now, His Majesty holds not this Salutation or Respect, by virtue of the League or of the Article, but as the same is a Right Inherent to the Empire of Great Britain; and therefore in the first part of the Article it

is declared in these words:

Lhat the afozetaid States General of the United Probinces, in due acknowledgement on their part of the King of Great Britain's KIGHA, to have his Flagg respected in the Seas bereafter mentioned, hall

and do beclare, and agré-

Now this Right extends and subjects all Nations whatsoever that shall pass through those Seas, and between those places meeting with any of His Majesty's Ships of War, bearing his Flagg, Jack, or Cognizance of Service, to strike their Top-sail, and take in their Flagg, in acknowledgement of His Majesty's Soveraignty in those Seas, and if any shall refuse to do it, or offer to resist, they may be compelled vi, manu & forti, for his Majesty's Honour is by no means to receive the least diminution.

V. If therefore any of his Majesty's Subjects should be fo negligent or forgetful to pay that obeyfance, when it may be done without loss of the Voyage, they are to be seized on, and brought to the Flagg, to answer the contempt, or else the Commander may remit the Name of the Ship, Commander or Master, as also the place from whence, and the Port to which she shall be bound to the Admiral; however before she is dismiss, she must pay the charge of the shot, that her negligence or forgetfulness occasioned, and afterwards may be indicted for the same, and severely punished.

VI. In His Majesty's Seas, none of His Ships of War

or to strike to any, and that in no other part, no ship of His Majesty is to strike her Flagg or Top-sail to any Forraigner, unless such forraign Ship shall have first struck, or at the same time have struck her Flagg or Top-sail to

His Majesties Ships.

VII. But if any of the King of England's Ships of War shall enter into the Harbour of any Forraign Prince or State, or into the road within shot of Canon of some Fort or Castle, vet such respect must be pay'd, as is usually there expected, and then the Commander is to fend a shore, to inform himself what return they will make to this Salute; and that if he hath received good affurance, that His Majesty's Ships shall be answer'd Gun for Gun, the Port is to be faluted, as is usual, but without affurance of being answered by an equal number of Guns, the Port is not to be faluted: And yet in that very respect before the Port is to be faluted, the Captain ought to inform himself, how Flaggs (of the fame quality with that he carries) of other Princes have been faluted there, the which is peremptorily to be infifted on, to be faluted with as great respect and advantage as any Flagg (of the same quality with the Captains) of any other Prince hath been faluted in that Place.

VIII. A Captain of a Ship of the fecond Rate, being neither Admiral, Vice-Admiral, nor Rear-Admiral, at his first coming and Saluting his Admiral or Commander in Chief is to give eleven Pieces, his Vice-Admiral nine, and his Reer-Admiral seven, and the other proportionably less by two, according to their Ranks, but the Commander or Captain of a Ship is not to salute his Admiral or Commander in Chief, after he hath done it once, except he hath been absent from the Flagg two Months.

IX. When a Ship of the fecond Rate, shall carry any Ambassador, Duke, or Nobleman, at his coming aboard, he is to give eleven Pieces, and at his landing sisteen; and when he shall carry a Knight, Lady or Gentleman of Quality, at their coming aboard he is to give seven, and at the landing eleven; and the other Ships are to give

Artic. 38.

less by two, according to their ranks and number of Or-

X. When an Admiral of any Forraign Nation is met with, he is to be answered with the like number by all the Ships he shall salute; if a Vice-Admiral, the Admiral is to answer him with twelve less; but the Vice-Admiral and Reer-Admiral, and as many of the rest as he shall salute; shall give him the like number: if a Reer-Admiral, then the Admiral and Vice-Admiral, to answer him with two less; but if he shall salute the Reer-Admiral, or any other, they are to answer him in the like number.

XI. When a Man of War, or Merchant-Man of another Nation, or of our own, falute any of the King's

Ships, he is to be answer'd by two less.

XII. When any of the Captains of His Majesties Ships shall have occasion to falute any of the Kings Castles, he is to give two Guns less than they are directed to give upon faluting their Admiral or Commander in Chief, as aforesaid: But this extends only in time of Peace, for if War is begun, no Guns ought to be fired in Salutes, unless to the Ships or Castles of some Forraign Prince or

State in Amity.

XIII. Those duties or obligations being laid on Commanders, they consist of two parts, the one is that Ancient prescription which the Crown of England claims by virtue of the Soveraignty of that Empire; the other is but that respect which is paid as visible marks of Honour and Esteem, either to Kingdoms or Persons publique or private, to whom these several Commands are to be observed; and yet in these which are both innocent and harmless of themselves, we want not those who being empty of all that may be called good, want not malice to start up words, Wherefore should the lives of Men, even Christian Men, be exposed to death and slaughter for shadows (as they call them) the right of salutation or Complement being no other in their opinion.

X I V. Admitting therefore that the evidence of original Compacts and Rights stand at such remote distances from us, that they are hardly discernable, and that the principle of Civil things, as well as Natural, is sought for

in a Chaos or Confusion; so that the evidence of ancient Facts vestigia nulla retrorsum, there being no infallible marks of their pre-existence (one step doth so confound and obliterate another) and that time it felf is but an imagination of our own, and intentional, not a real meafure for actions, which pass away concomitantly with that measure of time, in which they were done, for which reason we talk of ancient things, but as blind Men do of Colours: Notwithstanding prescription is suppofed by most to hold out fuch an evidence, that as they fay, * it ought to silence all Counterpleas in all Tribunals, and by the present allowance which is indulged to it, it either proves a good, or clears a vitiated Title; and this Prerogative it hath in the Civil Constitution of the World, and for quietness sake, that what it cannot find, we grant it a power to make.

* coke comm. on Littleton. fol. 25.

XIV. Yet if we examine all this strictly at the two great Tribunals, the external and the internal, and argue the Jus of it, as Statesmen and Lawyers do, we can then raise the Argument of it no higher in the external or temporal Court, than only this,is very convenient it should have the effects of Right, lest Properties and Dominion of things (hould be uncertain, and by the apparent negligences of time Owners should be punished, and that Controversies may have a speedy end: States looking more after publique repose and quiet, than after strict virtue; and more after those things which are ad alterum, than that which concerns a Mans own felf; for, fay they, The Gods look well enough after their own injuries. States Deorum injuria meddle not fo much with great prodigalities, as in petty Larcenies, our Chiefest Liberty, Priviledges or Prerogative in this World, consisting only in an Uncontroulable Right, which we have to undo our selves, if we please. Certainly if we plead at the other Tribunal, as Conscientious Lawyers, we must give our ultimate resolution out of that Law, Que inciditur non are, sed animis; which is not ingraved in Tables of Brass, but in the Tables of our Souls; for the Rules of Law tell us, Que principio vitiantur, ex post facto reconvalescant, and that prescription or usu-caption (which is but the lapse of so much time) hath the power to make Wrong a Right; yea, to change

Diis Cura.

change the morality of an action, and turn quantity into quality: upon the refult of all which, taking for granted, what those stubborn people do hold, that instead of being a Right, or a certain cause or proof of it, it only

makes a shadow or an opinion of Right.

X V. And when we have taken those people by the hand, and with eagerness run with them to the very bottom and end of the Line, and there find nothing, we are but in Pompey's aftonishment, when after his Conquest of Ferusalem, when he had with such reverence and curiofity visited the Santtum Santtorum, and found nothing there but a pair of Candle-sticks and a Chair, in which there was no God fitting; yet for all this mistake, he would not (as Fosephus faith) disorder or rob the Temple, which he took by force of Arms, because the very Opinion of Religion, bath something of Religion. (which made Jacob accept of Laban's Oath by an Idol) So ought not we for defect of giving the causes of the inception of Prescription, or of the Right in Prescription, disorder a State, or be the occasion of setting of two Nations at Enmity; nay, though in conscience we are sa-'tisfi'd that it contains but the opinion or shadow of Right: And as to the involving the lives of the innocent, there is no fuch thing in the matter, for there is not required any thing which they do not owe, nor are they defigned to death; but if the cause be such, that they that are innocent must perish, that is, be exposed to death by their Rulers, because they obstinately will not yield that which is Right, but will involve the lives of their innocent Subjects by force, to defend that which is wrong, fuch guilty Governours must answer for the defect of their own evil actions: On the other hand, there can be no doubt made, but he that hath an undoubted Right, being a Soveraign, the Subjects partake in the fame, and the indignity offered to him, they immediately become partakers in the fuffering, for the fatisfaction of which they may, yea, are obliged both by the Law of God and Nations to feek reparation (if their Prince shall command) vi, mann & forti, by the hazard of their Blood and Lives.

XVI. On the other hand, as War introduces the greatest of evils, viz. the taking away of Mens lives, and that which is equivalent to Life; so right Reason and Equity tells us, that it ought not to be undertaken without the greatest cause, which is the keeping of our Lives, and that without which our Lives cannot be kept; or if they should be kept, yet they would not be of any value to us, feeing there may be a Life worfe than Death, even Captivity; wherefore as we are forbidden to go to Law for a little occasion, so we are not to go to War, but for the greatest: Now those things that are equivalent to a Mans Life, are fuch whereto Almighty God appointed the same equal punishment as to those guilty of murder, and such were breakers into Houses, breakers of Marriage Fidelity, Publishers of false Religion, and those who rage in unnatural lusts. and the like.

However, before Mens Persons or Goods are to be invaded by War, one of these three conditions is requisite.

1. Necessity, according to the tacite contract in the first dividing of Goods, as hath been already observed.

2. A Debt.

3. A Mans ill merits, as when he doth great wrong,

commenc't, nor is the same repugnant to the Laws of

or takes part with those who do it. Against which if any thing is committed. War may be

Nature; that is, whether the thing may not be done unjustly, which hath a necessary repugnance to the Rational and Social Nature; among the first principles of Nature, there is nothing repugnant unto War; on the other hand there is much in favour of it, for both the end of War, the confervation of Life and Members, and the keeping and acquiring of things ufeful unto Life is Vipian. Leg. t. most agreeable to those principles: And if need be, to use force to that purpose is not disagreeable, since every Living thing hath by the gift of Nature strength, to the end it may be able to help and defend it felf; besides, Reason, and the Nature of Society inhibits not all force, but that which is repugnant to Society, that is, which depriveth another of his Right; for the end of Society

Sect. vim vi. D. de vi, & vi arma.

is, that every one may enjoy his own, this ought to be. and would have been, though the Dominion and Property of Possessions had not been introduced, for Life, Members and Liberty, would yet be proper to every one; and therefore without injury could not be invaded by another; to make use of what is common, and spend as much as may fuffice nature, would be the Right of the occupant, which Right none could without injury take away. And this is proved by that Battle of Abraham with the four Kings, who took Arms without any Commission from GOD, and yet was approved by him; therefore the Law of Nature was his warrant, whose Wisdome was no less eminent than his Sanctity, even by the report of Heathens, Berofus and Orpheus; nor is the same repugnant to the Hebrew Law or Gospel, as the same is most excellently proved by the Incomparable Grotius. * * De Fire notes

X VII. On the other hand, the fear of uncertain ac Pacis, lib. 1. danger, as building of Forts, Castles and Ships, and the cap. 1. like, though the former be on Frontiers, the refuling of Wives (when others may be had) the changing of Countries either Barren or Morish, for more fertile or healthfull, which may justly be done: As the case of the old Germans, as Tacitus relates; so likewise to pretend a Title to a Land, because it was never found out or heard of before, that is, if the same be held by a People that are under a Government; nay, though the Government be wicked, or think amis of GOD, or be of a dull wit; for Invention is of those things that belong to none, for neither is Moral Virtue, or Religious, or Perfection of Understanding required to Dominion; but victor de red yet if a new Place or Land shall be discovered, in which rel. 1. 1. 31. are a People altogether destitute of the use of Reason, fuch have no Dominion, but out of Charity only is due unto them what is necessary for Life; for such are accounted as Infants or Mad-men, whose Right or Property is transferred, that is the use of the same, according

to the Laws of Nations, in such case a Charitable War

may be commenc't.

XVIII. To prevent all the fad Calamities that Victor de Jure must inevitably follow the ungoverned hand in War, Belli n. 5.6, 7, Faith must by all means be laboured for ; for by that, 8.

not only every Common-wealth is conferved, but also that greater Society even of Nations; that once being taken away, then farewell Commerce, for that must be then taken away from Man; for Faith is the most Sacred thing that is feated in the breast of Man, and is so much more religiously to be kept by the Supream Rulers of the World, by how much more they are exempted from the punishment of their fins here than other Men; take away Faith, and then Man to Man would be, as Mr Hobbs obferves, even Wolves; and the more are Kings to embrace it, first for Conscience, and then for Faith and Credit fake, upon which depends the Authority of their Government. The Ambassadors of Justinian, addressed their Speech to Chofroes after this manner, Did we not fee you here with our own eyes, and pronounce these words in your ears, we should never have believed that Chofroes the Son of Cabades, would bring his Army, and enter forceably into the Roman bounds, contrary to his League, the only hope left to those that are afflicted with War; for what is this, but to change the Life of Men into the life of wild Beafts? take away Leagues, and there will be eternal wars. and wars without end will have this effect, to put Men befides themselves, and divest them of their Nature. If then a fafe Peace may be had, it is well worth the releasing of all or many of the injuries, losses and charges; according to that in Aristotle, Better it is to yield some of our roods to those that are more potent, than contend with them, and lese all: for the common chances of war must be confidered, which if fo, the scope of the principal part of this First Book may be avoided, and we let into that of Traffique and Commerce:

Procopius Per-

Of the various Rights and Obligations of Dunet and Dartners of Ships in cafes private.

I. Of Navigation in general.

II. Of Owners their feveral Powers over those Veffel's they are Partners in.

III, where Ships are obliged to fold : and what may be done when part protest against a Voyage.

IV. The Master bow brought in by the Owners, and the reason why in fuch a manner.

V. Where the Owners ought to be repaired for the Damages of the Mafter

VI. Where Ships brake in pieces determine the Partnership as to

Bullders, and where only bis to lefethein Dading.

whose Materials she was erected with.

VIII. where Property of the Veffel altered changes not that of the Boat.

make a Voyage before they can be IX. A Ship for the act of Pyracy becomes forfeited; yet if bona fide fold, where the Property may s be questioned.

X. Moneys borrowed by the Master, where the same obliges the Owners, and where not.

XII where he that obtains an unlamful possession of a Ship, shall answer the full Freight to the Owners.

the Veffel; and where not.

XII. And where the Owners hall
VII. where a Ship shall be the have their Freight though they

nou Excellent Fabrick

I IN the precedent Book having observed something of the rights of Persons and of Things in a flate of Nature, and how necessarily they came at first to be appropriated, and how equitably they are now continued in the possession of those to whom they are configned by the donation of others; and maintained or destroyed by the equity of those various Lawes which rules and governs them, all which is julified by the Scripture it felf; It may not now feem improper to examine the private causes changing the same, and of the contingencies and advantages that wait on that which we properly call Commerce. . . want and any age

The Great Creator no fooner had finished his Mighty Work, and given Man that Dominion which he now enjoyes as well over the Fish in the Seas, as the Beasts in

a A the Law M manne requires

of any can be performed being and y coming out to

Of Dwners and Partners of Shins.

the Field, he was not forgetful of bestowing on him those things which were necessary for the government and support of the same, creating at the same time Trees which grow as it were spontaneously into Vessels and Canoes, which wanted nothing but launching forth to render them useful for his accommodation, which afterwards he by his divine Genius (inspired by that Mighty One) finding Materials, hath fince fo Compleated and Equipt as to render it the most beautiful and stupendious Creature (not improperly so called) that the whole World can produce, which being not retarded by let of Winds, or other contingent Accidents, Submits it felf to plow the unknown paths of that wast Element, to brave all Encounters of Waves and Rocks, to fathom and furvey the vast emensities of the very World it self. to People, Cultivate and Civilize uninhabited and Barbarous Regions, and to proclaim to the Universe the Wonders of the Architect, the Skill of the Pilot, and above all, the benefits of Commerce, fo that it is no wonder at this day to find Nations contending who should furpals each other in the Art of Navigation, and to Monopolize if possible the very Commerce and Trade of the World into their hands; and that, all by the means of this most Excellent Fabrick.

Aretin. poft 6. item exercitor. num. 2. Instit. de oblig. que ex quali deliet.

II. Hence it is, that Ships and Vessels of that Rind be-Joan. Faber. in ing originally invented for pleand profit, not for pleafure and delight, to plow, the Seas, not to lye by the walls, to supply those on the Mountains as well as those on the Sea Coafts.

> Therefore upon any probable delign the major part of the Owners may even against the confers though not without the privity and knowledge of the rest, Freight out their Vessel to Sea. If you yours! a lead it supriging?

> If it should so fall out that the major part protest against the Voyage, and but one left that is for the Voyage, yet the same may be affected by that party, especially if there be equality in Partnership of the 10 16920 3114

Leg. Fin. C. S. pro Socio & poss. inft. & D. sod.

III. Owners by Law can no ways be obliged to continue their paction or Partnership without fundering; but yet if they will funder, the Law Maritime requires fome confiderations to be performed before they can fo And do.

And therefore if the Ship be newly built and riever Ligin hoceanes yet made a Voyage, or is newly bought, the ought to be fi convenial pro fubject to one Voyage upon the common outread and Sco. hazard, before any of the Owners shall be heard to funder and discharge their parts.

If it falls out that one is fo obstinate that his confent cannot be had, yet the Law will enforce him either to in leg. bee hold, or to fell his proportion ; but if he will fet no price, diffinitio S. the rest may outrigg her at their own costs and charges, cum fundam. f. and whatfoever Freight the earns, he is not to have any locat. fhare or benefit in the fame. But if fuch Veffel happens to milcarry or be cast away, the rest must answer him his Such Vessels part or proportion in the Veffel.

when Freighted out against the grain of

fome of the Part-Owners, the fame is under fuch Proviloes, Cautions and Limitations as the Law in that cafe requires.

But if it should fall out that the major part of the Gloss Leg. # Owners refuse to set out the Vessel to Sea, there by real navis & juris fon of the unequality they may not be compelled, but in leg. utiq then fuch Veffel is to be valued and fold; The like rel undic, & where part of the Owners become deficient or unable leg. arberibus? to fet her forth to Sea.

wie fruct.

I V. The Maffer of the Veffel is elegable by the part-Owners not by the majority, yet he that is most able is Lee non aliste to be referred. The wildow of the later A con hair by to be preferred. The wifdom of the later Ages have been hable fuch, that few have gone out in that condition, but those as have commonly had theres or pares in the fame Veffel: In the preferring therefore of a Malter, his Ability * 18 H. S. num. and Honesty to be considered, since on him rests the 52. charge not onely of the Veffel, but of the Lading; their tco. 4. 18. very Actions subjecting the Owners to answer for all Hill 23 Car. 2. damage that shall be futtained by him or his Marriners, B. R. Morfe beit in Port or at Sea to the Lading or Goods of the verfus sin. Merchants or Laders, and they are made lyable as well by the Common Lawes * of England, as the Law Mari-+ Nant. Cany.

V. If the Maffer commits offences either negligently Stab. leg. 1. or wilfully, he shall be responsible over to his Owners for the repairation of damage ; nor are they bound to joyn, but may fever and fue apart as well by the Common

Aaz

Hill. 25, 27. Car. 2. in B.R. Stanley verfus Ayles.

Leg. inter Ripullantem in 6. Sacram. ff. de ver. oblig.

Leg. quod in S. fin. F. de

Law tas the Maritime; fo likewife if the Ship hath earned Freight, and part of them receive their parts, the rest may bring their Action for their share without joyning with the other.

VI. If a Ship be broke up or taken in pieces, with an intent to convert the same to other uses; if afterwards upon advice or change of mind, the be rebuilt with the fame Materials, yet this is now another, and not the fame Ship; especially if the Keel be ript up or changed, and the whole Ship be once all taken afunder and rebuilt, there determines the Partnership quad as to the Ship. But if a Ship be riet up in parts, and taken afunder in parts, and repaired in parts, yet the remains fill the fame Veffel and not another, nay though the hath been fo often repaired that there remains not one flick of the Original Fabrick.

Leg. Mufins ff. de rei venic'.

VII. If a man shall repair his Ship with Plank or other Materials belonging to another, yet the Ship maintaines and keeps her first Owners.

ff. lib.6. tit 1. leg. 61. S naule ag

But if a man shall take Plank and Materials belonging to another and prepared for the use of Shipping, and with them build a Ship, the property of the Veffel followes the Owners of the Materials, and not the builder.

ff. de acq. rer. convenerit S. fi quis fic ff. de pign. act.

Leg. Gex mis. - But if a man cuts down the thees of another aritakes Timber or Planks prepared for the erecting or repairing dom. & lig. fi of a dwelling house, nay though some of them are for Shipping, and builds a Ship 4 the property follows not the Owners but the Buildersil bad ylabamoo avad as

VIII. If a Ship be fold together with her tackle, fur-Leg. Marcellus niture, apparel, and all other her instruments thereunto in S. aymanen- belonging yet by those words the Ships boat is not conta'ff. de re winveyed, but that remains fill in the Owners fo it is if dicat and the Ship be freighted out, and afterwards at Sea, the commits Piracy, the Ship is forfeited, but the Boat remains B.R. Rolls 1. Mill to the Owners.* vod bas arbs. to amendetel part, Abridg. wald, in leg. cum proponas Code de naute. & fenore num. 8. Wed occurred aday. fo. 530.

Mich. 13 Jac. in B. R. Sir Rich. Bingley's Cafe. Rolls. Abridg fo. 530.

IX. If a Ship commits Piracy by reason of which, the becomes forfeited, if before seizure she be Bond fide fold, the property shall not be questioned, nor the Owners divested of the lame. I like a more sol line med vern ned

X. If

X. If a Master shall take up Moneys to mend or Victual Dig. lib. 14. his Ship where there is no occasion, (though generally tst. 1. \$. 17. the Owners (hall answer the fact of the Malter) vet here they shall not, but only the Matter. But if there were cause of mending the Ship, though the Mafter fpend the money another way, yet the Owner and Ship become lyable to Bridgeman's the fatisfaction of the Creditor ; for it were very unrea- Cafe, Hobart, fonable that the Creditor should be bound to take upon fo. 10, 11. him the care of the repairing the Ship, & supply the Owners room, which must be so if it should be necessary for him, to prove that the money was laid out upon the Ship; fo on the other hand it stands with reason that he be fure that he lends his money on such an occasion, as whereby the Masters fact may oblige the Owners, which he can not do otherwise, unless he knows that the money borrowed as necessary for the repair of the Ship, and there- Gloss. Affrican. fore if the Ship wanted fome repairs, and a far greater fuper eod. leg. and Extravagant sum was lent then was needful, the Owners feall not be liable for the whole.

XI. If a man gets possellion of a Ship having no Title tit. 1. 62. to the same, by the Law Maritime he shall answer such 1.7. tit. 1. 12. damage as the Ship in all probability might have earned; 5. 1. & Paand the reason of that is, because the only end of Ship-pinion on the

ping is the imployment thereof.

XII. A Ship is Freighted out accordingly the receives Digeft. lib. 19. in her lading pursuant to agreement, afterwards an Em- tit. 2. 61. birgo happens, and the lading is taken as forfeited, yet scevela on the Owners shall not withstanding receive Freight, for the same Law. here is no fault in them, but only in the Merchant.

Thus men from their Necessity and Safety having from hollow Trees, nay Reeds, Twiggs and Leather (for fuch were the rude beginnings of those stupendious things we now admire) advanced the Art to that degree, as to render it now the most usefullest thing extant; and as the Mathematiques, Aftronomy, and other Sciences bath added to its fecurity, so hath succeeding Ages from time to time provided Priviledges and Laws by which it hath alwayes been regulated and governed, the which upon all occasions, and in all Courts hash generally had a genuine conftruction as near as might be to the Marine Customes; and therefore at this day if a Ship be taken away or the Owners disposses, they may maintain an Action of Trover and Conversion for 8th or 16th part of the same, as well by the Common Laws of this Kingdom, as the Law Maritime.

CHAP. II.

Masters of Ships their actions considered in reference to cases private and publique.

I. A Master or Skipper his Condition considered in reference to his interest and Authority generally.

II. Of Goods loft or imbezelled, or any other detriment happens in a Port, who shall answer.

III. The Duty of Masters of Ships, as if they shall set Sayl after an Imbargo, who shall answer.

IV. And of faults ascribed to him before departure in Tempestuous weather, staying in Port &c.

V. Over-charging or over-lading the Ship above the birth-mark, or receit of fuch persons a Ship-board as may hazard the Lading.

VI. Of Lading aboard in the Ships of Enemies, his own proving difabled.

VII. Of shipping of Goods elfewhere then at the publique Ports or Keys, and of taking in probibited Goods

VIII. Of wearing unlawful Colours or Flaggs; and of yielding up his Ship Cowardly if affaulted, where lyable, and where exculed.

IX. Of carrying fiftitious Cockquets and Papers, and refusing payment of Customes and Duties.

X. Of setting Sayl with insufficient Tackle, and of taking in and delivering out with the like, and of his charge of Goods till safely delivered.

XI. Of departing without giving

Notice to the Customer.

XII. Of Faults committed by Masters and Skippers at Sea.

XIII. Rules in Law in the Charging him for Reparation of Damage.

XIV. Of the Power and Authority that the Master hath in disposing Hipochicating or pludging the Ship, Furniture and Lading.

XV. Where Masters are disabled though in necessity to Impawn the Vessel.

XVI. Where they may dispose of Vessel and Lading, and n be a not.

XVII. what Vessels and Marriners the Master must have for Importing in or Exporting out of his MajestiesPlantations in Asia, Affrica and America.

XVIII. What Ships may go from Port to Port in England.

XIX. Ships not to import the Goods of any Country but of that from whence they are brought.

XX. what time the Master shall be coming up after arrived at Gravesend, or at any other Port within the Realm, in order to his discharge.

XXI. Of going from Port to Port within the Realm, how provi-

ded.

XXII. Of Goods prohibited to be imported from Netherlands or Germany is any Ships whatfoever.

I. A Master of a Ship is no more than one who for his knowledg in Navigation, fidelity & discretion, hath the Government of the Ship committed to his care and Lee, I, de exmanagement, and by the Common Lam, by which proper- reit. Act. ties are to be guided, he hath no property either general or foccial, by the constituting of him a Master; yet the Hob. Rep. fo. 11. Law looks upon him as an Officer, who must render and Bridgeman's give an account for the whole charge when once commit- Cafe. ted to his care and custody, and upon failer to render fatisfaction; and therefore if misfortune happens, if they be either through negligence, wilfulness, or ignorance of himfelf or his Marriners, he must be responsible.

II. If the fault be committed in any Port, Haven, River or Creek, or any other place which is infra Corpus Comi- * Dowdal's tatus, the Common Law shall have Jurisdiction to an- Cafe. fwer the party damnified and not the Admiralty, but if coke lib 6. the same be committed super altum mare, the Admiralty so. 47. shall have Jurisdiction of the same; yet if it be on a place where there is divisum imperium, then according to the flux or reflux the Admiralty may challenge the other of Common right belonging to the Common Law, accord-

ing to the resolution given.

And therefore fo foon as Merchandifes and other Commodities are put aboard the Ship, whether she be riding in Port, Haven, or any other part of the Seas, he that is Exercitor Navis is chargeable therewith; and if the same be there lost or purloyned, or sustain any damage, hurt or stables. 1. loss, whether in the Haven or Port before, or upon the Sect. 2,3,6%. Seas after the is in her Voyage, whether it be by Marriners or by any other through their permission, he that is Exercitor Navis must answer the damage, for that the very lading of the goods aboard the Ship does Subject the Mafler to answer the same; and with this agrees the Common Law, where it was adjudged, that goods being fent aboard a Ship, and the Master having signed his Bills of Lading for the same ; the goods were stowed, and in the night divers'persons under the pretence that they were Press-Masters entered the Ship and rob'd her of those Aa 4 Goods.

goods, the Merchant brought an action at the Common Law against the Matter, and the Question was, Whe-

* The which the Civil Law does fometimes allow.

\$ 3 ... & dit . .

Morfe verfus Slut, Hill.

23 Car. 2. Re-

gu, adjudged

on a Special

at the Bar.

ing het wie

ther he should answer for the same? for it was alledged on his part. That there was no default or negligence in him, for he had a sufficient guard, the Goods were all lockt up under hatches, the Thieves came as Prefi-Mafters and by force rob'd the Ship, and that the fame was vis major, * and that he could not have prevented the fame; And fallly, That though he was called Mafter or Exercitir navy, yet he had no share in the Ship, and was but in the nature of a Servant acting for a Salary, But notwithstanding it was adjudged for the Plaintiff, for at his peril he must fee that all things be forth-coming that are delivered to him, let what accident will happen, (the Verdict found Act of God, or an Enemy onely excepted) but for Fire, Thieves and the like, he must answer, and is in the nature of a Common Carryer; and that though he receives

omnium nauta-Tum faorum frue liberi fint. five fervi faetum præftare.

Debet Exercitor a Sallary, yet he is a known and publique Officer, and one that the Law looks upon to answer, and that the Plaintiff hath his Election to charge either Mafter or Owners, or both at his pleasure, but can have but one fatisfaction.

nec immerito factum corum præftat cum ife cos sno periculo adhibuerit sed non alias præstat quam in ipfum navedamnum datum fit, caterum, fi extra navim licet à nautis non prastabit, Nant. Caup. Stabilit. Leg. 1. Sect. 7. debet exercitor.

Eod. leg. debet Exercisor.

If a Master shall receive Goods at the Wharf or Key, or shall send his Boat for the same, and they happen to be lost, he shall likewise answer both by the Maritime Law and the Common Law.

III. If Goods are laden aboard, and after an Embargo Digeft. lib. 9. 2: tit. Leg. 61, or restraint from the Prince or State he breaks ground, or endeavours to fayl away, if any damage accrues, he must be responsible for the same. The reason is, because his Freight is due and mult be paid, may although the very Goodsbe seized as bons contra bandos.

Log. Oleron. Judg. 2.

IV. He must not sayl in Tempestuous weather, nor, put forth to Sea without having first consulted with his company; + Nor must be stay in Port or Harbour without just cause when a fair wind invites his departure.

V. He

V. He must not over-charge or lade his Ship above the birth-mark, or take into his Ship any persons of an obscure and unknown condition without Letters of fase conduct. men is july and vertaines Star. 18. H. 6.

VI. Nor ought he to lade any of his Merchants Goods cap. 8. aboard any of the Kings Enemies Ships, (admitting his !. alt. ad. Lig. own Veffel leaky or disabled) without Letters of fale Rhod. & leg. Conduct, otherwise the same may be made prize, and he c. de Nant. inust answer the damage that follows the action.

Nor shall he come or fneak into the Creeks or other places when laden homewards, but into the Kings great Star. 4 H. 4.20. Ports, (unless he be driven in by Tempest) for other- Leg. fin. parag. wise he forfeits to the King all the Merchandize, and gratem. therefore must answer. Stat. 15. H. 6

VII. Nor ought he to ship any Merchandize, but cap. only at the Publique Ports and Keys.

He must not lade any prohibited or unlawful Goods, 19 Eliz. cap.9. whereby the whole Cargo may be in danger of Confica- 1 Jac. cap. 25. tion, or at least subject to seizure or surreption.

He may not fet fayl without able and sufficient Marriners both for quality and number.

VIII. He may not use any unlawful Colours, Enfigns, Pendants, Jacks or Flaggs, whereby his Ship or 26. Car. 2. Lading, may incur a Seizure, or the Cargo receive any per leg. quant detriment or damage.

He must not suffer the Lading to be stolne or im- leg. Rhod. D. leg. in fin. bezled, if the same be, he must be responsible, unless it be de leg. fi venwhere there is vis Major, as if he be affaulted at Sea either dita peric. rei by Enemies, Ships of Reprize, or Pyrats, there if no vend. & lig. 5. fault or negligence was in him , but that he performed & 6. Name. the part of an honest faithful and valiant * man, he shall * Stat. 16 Car. be excused. Yet it hath been adjudged. That if a 2. cap. 8. Merchant-man lyes in a Port or Haven, and a Pyrat, Sea Rover, or other Thieves enter her and over-power Morfe versus her men, and then rob her, yet the Master must be re- Slue, 23 Car.in sponsible; but if an Enemy enter and commit the de- B. R. Rott. pridation, there the Mafter is excused.

IX. He must not carry any counterseit Cocquets or 13 R. 2. cap.9. other fictitious and colourable Ship Papers to involve the Lig. 1. cod. de Navib. nonex-Goods of the Innocent with the Necent.

* Proclama-

tion 25 Sept.

proponas ad

cusand.

Secund, fin. le. nit. ad leg. Rbod. & leg. quum proponas C. de Naup. fanor.

Lag.Oleron. 24. Per Leg. quant. de Pub.

* Coke lib. En-

Nor must be resuse the payment of the just and Ordinary Duties and Port-charges, Customes and Imposts, to the hazard of any part of his Lading; yet if he offers that which is just and pertaines to pay, then he is excused.

X. He must not set Sail with insufficient Rigging or Tackle, or with other or sewer Cables then is usual and requisite, respect being had to the burthen of the Vessel; And if any damage happens by the delivery of the goods into the Lighter, as that the Ropes break and the like, there he must answer; but if the Lighter comes to the Wharf or Key, and then in taking up the Goods, the Rope breaks, the Master is excused, and the Wharsinger is liable. *

If fine goods or the like are put into a close Lighter and to be conveyed from the Ship to the Key, it is usual there the Master sends a Competent number of his Marriners to look to the Merchandize, if then any of the goods are lost or imbezled, the Master is responsible * and not the Wharfinger; but if such goods are to be sent aboard a Ship, there the Wharfinger at his peril must take care the same be preserved.

*Pasch. 26 Car.
rul'd at GuildHall before
L.C. J. Hale,
inter
and Peasock.

18 Eliz. cap.9. 14 Car. 2. cap. 11.

XI. After his arrival at Port, he ought to fee that the Ship be well moared and Anchored, and after reladed not to depart or fet Sail till he hath been cleared; for if any damage happens by reason of any fault or negligence in him or his Marriners, whereby the Merchant or the Lading receives any damage, he must answer the same.

XII. And as the Law ascribes these things and many more to him as faults, when committed by him or his Marriners, in Ports, so there are other things which the Law looks upon to be as faults in him in his Voyage, when done.

Digeft. l. cum in debitoff. de Probat. As if he deviates in his course without just cause, or steers a dangerous and unusual way, when he may have a more secure passage: Though to avoid illegal impositions, he may somewhat change his course; nor may he sail by places insested with Pyrates, Enemies, or other places notoriously known to be unsafe, nor engage his Vessel among Rocks

Rocks or remarkable Sands, being thereto not necessita. Li. 1. cod. de ted by Violence of Wind and Weather, or deluded by Navibus non false lights.

XIII. By the Maritime Law, he that will charge a Mafler with a fault as in relation to his Duty, must not think that a general charge is sufficient in Law, but he ought to assign and specific the very fault wherewith he is so charged.

So, he that will infer, that such and such a sad disaster to have happened or been occasioned by reason of some sault in the Marriners, must not only prove the sault it self, but must also prove that that sault did dispose to such a sad event, or that such a missortune could not have hap-

pened without such a fault precedent.

XIV. When Voyages are undertaken, the Master is * Recedit Caloum there placed in by the owners, and they ought to make fore utrum fine good the Masters fact and deed, * And therefore as navim, res mifthe whole Care and Charge of Ship and Goods are com- Se es affignate mitted to the Master, it is the prudence of the Owners fint, an et fi non to be careful who they will admit Commander of their hoc tamen ipfo Ship, fince their actions subject them to answer the da-quod in navim mage, or what ever other act he shall do in reference to miffe, funt rehis Imploy; And therefore he can freight out the Vef-cetomnium recefel, take in Goods and Passengers, mend and furnish pit custodiam the Ship, and to that effect if need be in a strange Coun- que in navim trey he may borrow Money with advice of his Marri-illote sunt et ners, upon fome of the Tackle, or fell fome of the Mer- factum non fochandize. If part of the Goods shall be fold in such ne- preffare debet cellity, the highest price that the remainder are fold for sed at restorant. must be answered and paid to the Merchant; after which F. Nante Caup. the Merchant must pay for the Freight of those Goods stab. leg. I. Sect. as well as for the remainder, Leg. Oleron 1. But if the recepit. Ship in the Voyage happens to be cast away, then onely shall be tendred the price that the Goods were bought for.

By the Common Law the Master of a Ship could not impawn the Ship or Goods for no property either general or special, nor such power is given unto him by the constituting of him a Master.

Yet the Common Law hath held the Law of Oleron reason-

th has I treasonable, That if a Ship be at Sea and takes leake, or I otherwise wants Victual or other Necessaries, whereby either her felf be in danger or the Voyage defeated, that in such case of necessity the Master may impawn for Money or other things to relieve fuch Extremeties by imploying the money to that end; and therefore he being the person trusted with the Ship and Voyage, may therefore reasonably be thought to have that power given to him implicitly, rather then to fee the whole loft.

Leg. Oleron. Cab. 22. Bridgman's Cafe, Hobart, fo. 10, 11.

Cap. 1. 12.

But a Master for any debt of his own cannot impawn. or Hipothyeate the Ship, &cc. for the same is no waves lyable but in cases of necessity for the relief and com-

pleating of the Vovage.

Nor can he fell or dispose of the same without an authority or License from the Owners; and when he does Impawn or Hipothycate the Vessel or Furniture, he Leg.Oleron. ought to have the consent and advice of his Marri-

> XV. And where the Ship is well engaged, the is for ever obliged, and the Owners are concluded thereby, till

Redemption.

But in regard Masters might not be attempted to engage the Owners, or infetter them with fuch fort of Obligations, but where there is very apparent cause and necessity, they seldome suffer any to go Skipper or Master but he that has a share or part in her; so that if Moneys or provisions be taken up, he must bear his equal share and proportion with the rest.

Fudement Oleren. Cap. 22.

The Master cannot on every case of necessity impawn the Vessel or Furniture; for if she be Freighted, and he and the Owners are to joyn in the laying in of the provisions for the Voyage, and perhaps he wants money, (a great fign of necessity) yet can he not impawn the Vessel or Furniture, any other or further then for his own part or share in her, the which he may transfer and grant as a man may do an 8th or 5th part in Lands or Houses: But such obligation of the Vessel must be in forreign parts or places where the calamity or necessity is universal on the Veffel.

XVI. If the Veffel happens afterwards to be wreckt

or cast away, and the Marriners by their great pains and care recover fome of the raines and lading utile Mafter in that case may pledg the same, the produce of which he may distribute amongst his distressed Marriners in lost ei and T order to the carrying them home to their own Gountry; Jacon be mail order to the Sale Jacon Cold vage, then their reward is funk and loft with the Veffel, 201 10 . With

But if there be any confiderable part of the lading preferved he ought not to difmiss his Marriners, till advice from the Laders or Freighters, for otherwife perchance

he may be made lyable.

If Merchan's freight a veffel at their own charges, and fet her to Sea, and then happens afterwards to be Weather-bounds the Mafter may impawn either Ship or Lading at his pleasure, or at least such as he could conveniently raise moneys on, rather then fee the whole Voy- cap. 22. age loft. And if he cannot pawn the Lading, he may fell the fame, that is, fo much'as is necessary , in all which cafes his act obliges. some spine while an barroo

However, Orders and inftructions are as carefully to be look'd upon and followed as the Magnate. de sale of

XVII. He is not to Import into, or Export out of The like proany the English Plantations in Afia, Affrica, or America, vision on the but in English or Irish Veffels or of the Veffels built and like plenalty is belonging to that Country, Illand, Plantation of Terri- for Goods of tory. The Master and 3 fourths of the Marriners to be of the Domi-Englift, upon forfeiture of Ship and Goods. And if pions and otherwise, they are to be look't upon as Prize, and may Territories of be feized by any of the Kings Officers and Commanders, the great czar and to be divided as Prizes, according to the Orders and So likewife of reffies Plantations, are to be Shipped, Case off to salura

All Goods of the Growth of his Majeffier Plantations longing to the are not to be imported into England, heland, of Wales, Othoman Ter-Islands of Terfey or Guernfey, but in such Westels as early Dominions. belong to Owners that are of England Instant Wales, Ferfey or Guernfey, and three fourths at least of the Note. In cases Marriners are to be Englift, apon forfeiture of Ship and of fickness, Goods, Vistaria que sid sanire en guilent I nogu mel) Death, Capri-

The Goods and Wates of those Plantations, and brought the Clause as in fuch manner as aforefaid, must be brought from those to Marriners. very Countries of their Reveral productions and growths,

of Joley or GARITA Sy.

12 Car. 2

cap. 18.

Mulcevy, and Currants be-

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All Goods of the Growth of his Majestics Plantations longing to the are not to be imported into England, heland, of Wales, Citoman Ter-Islands of Ferfey or Guernfey, but in fuch wellels as routy Dominions. belong to Owners that are of England, Iretand Wales, Ferfey of Guernfey, and three fourths at least of the Note, In cases Marriners are to be Englift, apon forfeiture of Ship and of fickness, Goods Witherib que & eid aguird ad guibne I noqu mil Death, Capti-

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that do not

of Joley or Gatinity.

12 Car. 2 Cap. 18.

Muscovy, and Currants be-

of Fersey or

Guernfey.

of from the Ports where they are usually Shipped out? on forfeiture of Ship and Goods.

XVIII. No Ship to go from Port to Port in England. That is, those Ireland, Waler, Jerfey, or Guernsey, or Bermick, unless the Owners are Denizens or Naturalized, and the Maffer that do not

belong to and a fourths to be English. Backib, Itib,

All Owners must Iwear that their Vessels or Ships wellb, or those are their own proper Ships and Veffels, and that no Forraigner has any share or part in her, and must enter the fame, and that the was bought for a valuable consideration, Bona fide.

Nor to bring in any goods from any place, but what are of the growth of that very Country, or those places which usually are for the first Shipping, on pain of for-

feiture of their Veffel and Furniture.

This does not extend that Masters may take in goods in any part of the Levent or Streights, although they are not of the very growth of the place, fo that they be imported in English Ships 3 fourths English Marriners: So likewise those Ships that are for India in any of those Seas to the Southward and Eastward of Cabo bona Spetanza. although the Ports are not the places of their very growth.

Any people of England may import (the Matter and Marriners 3 fourths English) any goods or water from Spain, Portugal, Azores, Madera, or Canary Islands. Nav in Ships that are not English built Bullion may be imported; fo likewife in those that are taken by way of

Prize. Bona fide.

But Sug irs, Tobacco, Cottens, Ginger, Indicoes, Fuflick or any other dying Wood of the growth of his Majesties Plantations, are to be Shipped, carryed or conveyed from any of the English Plantations, are to be carryed to no place in the World, but are to come directly for England Ireland, Wales or Berwick, upon pain of forfelture of Ship and goods, and the Master is to give bond with one Security of a Thousand pound if the Ship be under the burden of a 100 Tuns, and 2000 l, if above. that upon Landing he brings his Ship directly into England Beland Wales or Berwick) the danger of the Seas excepted;) fo likewife they are to do the fame for the Ships that shall go from the Plantations at the Plantations

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to the Governour, upon forfeiture of the Ship and

XX. When the Mafter shall arrive at Gravefend, he 12 Car. 2. shall not be above Three days coming from thence to the Cap. 18. blace of discharge; nor is not to touch at any Key or Wharfe till he comes to Chefters Key, unless hindred by contrary Winds, or draught of Water, or other just impediment to be allowed by the Officers And likewife he or his Purfer are there to make Oath of the Burthen, Contents and Lading of his Ship, and of the marks, number, contents and qualities of every parcel of Goods therein laden to the best of his knowledge; also where and in what Port the took in her Lading, and what Country built, and how manned; who was Mafter during the Voyage, and who the Owners; And in out-Ports must come up to the place of unlading, as the condition of the Port requires, and make Entries on pain of 1001. Marciners out in

Nor is such Master to lade aboard any Goods outwards to any place whatsoever, without Entring the Ship at the 14 Car. 2. Custom-House of her Caprain, Master, Eurthen, Guns, 12 Car. Ammunition, and to what place the intends, and before cap. 18. departure to bring in a Note under his hand of every Merchant that shall have layed aboard any Goods, together with the marks and numbers of such Goods, and be sworn as to the same, on paint of 200 s.

No Captain, Master, Purser of any of his Majesties Ships of War shall unlade any Goods before Entry

made, on pain of 100 l.

Note. There is a List of all Forraign built Ships in the Exchequer, and that no Forraign Ship not built in any of his Majesties Dominions of Asia, Affrica, or America, after 1. Otiob. 1662. and expressly named in the List, shall enjoy the Priviledges of a Ship belonging to English or Ireland, although owned and manned by English, except onely such as are taken by way of reprize and condemnation made in the Admiralty as lawful prize; none but English and Irish Subjects in the Plantations are to be accounted English.

in the Realm, he ought to have Warrant for the fame,

on pain of forfeiture of the goods, and he is to take forth a Cockquet, and become bound to go to such Port designed for and to return a Certificate from the chief Officers of that Port where the same was designed for, and discharged within 6 months from the date of the Cockquet and any same and the cockquet an

But from the Netberlands or Germany there may not be imposted no fort of Wines (other then Rhenish) Spicery, Grocery, Tobacco, Pot-ashes, Pitch, Tar, Salt, Rozin, Deal-Boards, hard Timber, or Olives, Oyl, in any manner of Ships whatfoever.

It might not feem impertinent that this latter part which is abridged as in reference to matters publick should be inferred for that fornetime it may happen that an honest and well meaning Master or Skipper might innocently involve and hazard the loss of his Ship by committing acts against Lawes positive and prohibitory; and though Masters and Marriners quatales be not so exquifite as to know all that does belong to their duties. or at least that which the Law laves incumbent on their mos of thoulders, yet for that most of them have fome fmall .Si . slimmerings of the fame, that fuch hints in matters publick as well as private may pot onely be of some ad--vantage to them, but likewife to Merchants, who always open the miscarriages of the Masters, prove the greatest sufferers, the offenders for the most part, proving No Captain Matter, Park atreadof voices of

Ships of War thall unlade any Goods before Entry made, on pain of 100%.

Yet There is a Lin of all Fortain haid Ships in the Endequer, and that no Fortaign Ship not built in any or his Majeffics Dommons of Africations, or America, alter 1 0.74 260 284 [Jewell of medium the list or beland, although owned and manned by English, or cyclometry funds as an taken by way of reprize and concept onely fuch as an taken by way of reprize and concept onely fuch as an taken by way of reprize and concept onely fuch as the Admirally as lawful prize; none demand the fails subjects in the Flantain of are to be

secondated Engille.

Lithe Muller likeli have freight finen Pers to Post within the Realm, he ought to have Wesser to the face,

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CHAP. III.

Of Parriners, their leveral Offices and Jimmunities: And of Barracry committed by them.

i. The several Maritime Officers a Shipboard, and their Charges and Duties.

11. Of the Masters power and Authority over them, as in relation to punishing or otherwise.

III. The duty that Marriners owe to each other, and they to the Ship.

IV. Their attendance requisite when laded; and if detriment, where to be responsible.

V. where Accidents befall them, where they ought to be look't after; and at whole cofts.

VI The Marriace's Oath where tequifite to the discharging of the Master.

VII. What Accidents does destroy, and what not their wages.

VIII. Where they may join all in a Suit for the recovery of their wages, and where not.

IX. Of their wages where lyable to answer damage.

K. where they absolutely lose their wates.

XI. Of Money or Goods taken up by

a Marriner, where it shall be debt, and where a discount of bis mages.

XII. And of their becoming lyable to correction.

XIII. Barrarry in the Marriners, the reason why the Law imputes offences in them to be answered by the Master.

XIV. In what cases the Master shall become syable for the actions one of his Marriners.

XV. Of Goods purloyned before they are brought a Shipboard i where the Master is bound to anfiver, and where not.

XVI. Of the Antiquity of Such Custome.

X VII. Of Goods brought secretly in a Shiphoard is purloyned, where the number is not made ly-

XVIII. Of Cautten or forewarning where the same shall excuse the Master.

XIX. Where the Master Gall be lyable, notwithstanding such Cautions.

The Persons Ordinary for sayling in Ships have divers Denominations; The first which is the Leg I. & Paraditer, known to us and by most Nations both sim ad leg, now and of old, and especially by the Roman Laws, Na. Rhod. & L. 12 vicularing of Magister Navis in English rendred Master, or Navis. Caupo. Exercitor Navis; in the Intonique, Skipper; by the Gre-

presund where Iddact or the Crew are

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cians, Nauarchus or Nauclerus; by the Italian, Patrono, But this is only to those Vessels that are Ships of Burden and of Carriage: For to Ships of War the principal there is commonly called Commander or Captain. The next in Order of Office to the Master, is he who directs the Ship in the Course of her Voyage, by the French called Pylott; by the English and Flemming, Steinsman; by the Romans, Gubernator; by the Italians, Nochiero Pilotto and Nauarchus, as Gerretus writies. The third is esteemed the Master's Mate or Companion, chiefly if the Master be Steerst man himself; of old by the Grecian and Roman called Proreta; his Charge is to command all before the Master.

Vid. leg. Confol.

His Succeffor in order is the Carpenter or Ship-wright, by those two Nations of old, called Naupegus by the latter, by the first Calaphates, from the Lyons of one of that Rank sprang that great Emperour Michael, sirnamed Calaphates, who denied not to own the quality of his Father among his Regal Titles. The very name Calaphate, the Venation and Italian still use to this day.

The Father. was of Phalagonia, as Egnatius Volaterans obferves, lib. 23.

The next who succeeds him in Order, is he who bears the Charge of the Ships Boat, by the Halians called Brachierie; by the Grecians and Romans, Garabits, from Cara-

bus, which denotes the Boat of a Ship.

The Sxth in Order, especially in Ships of Burden, is the Clerk or Parfer, by the Italian called Scrivato, whose duty is the registring and keeping the Accounts of all received in or delivered out of the Ship; for all other Goods that are not by him entred or taken into charge, if they happen to be call over board in storm or are stolne or imbezled, the Master answers them not, there being no obligation on him by Law for the same; his duty is to unlade by day, not might

Ill Consolato & per Stat. 14 Car. 2. Cap. 11.

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The 7th a most necessary Officer, as long as there are aboard bellies, sharp stomachs and provision, called the Cook, it doubt that he is a contention of a rovib

The 8th is the Ships Boy, who keeps her confinually in Harbours, called of old by the Grecians Nauphylakes; by the Italians, Guardiano: These persons are distinct in offices and names, and are likewise distinguished in their hyres and wages; The rest of the Crew are under the common name of Marriners, by the Remans called Nautas;

and by that means his power and authority is by Law much countenanced, especially in the keeping his Crew in peace so long as they eat his bread; and it a Marriner shall happen to be bruised or hurt in doing his duty and service, the Master is to take care that he be carefully * Per lig. Oklook't after in order to the procuring his recovery; and ron, Chap. 6. if it be occasioned by the miscarriage of another a ship-board, he may refund the damage out of his wages, but exerc. ast. of l. still remembring who gave the first assault.

If it happens that the Master commands his Boat to casp. be manned out, and it so happens that the same is out of Order, or untit to take the Sea, the Tewes, or other accountingents being impotent, if the Marriners happen to be drowned, the Master is to repay one whole years hyre to the Heirs of the drowned: Therefore Masters ought carefully to view and see that the Boat be fit for men to

trust their lives in upon his command.

If a Marriner shall commit a fault, and the Master shall lift up the Towell 3 times before any Marriner, and he shall not submit, the Master at the next place of land may discharge him; and if he resules to go ashoar, he shall lose half his Wages, and all his Goods within the Ship: If the Marriner shall submit, and the Master will per its. Oliver not receive the same, he shall have his whole Wages: cap. 14. Or if the Marriner shall depart the Ship on the Master's command, and the Master happens not to take another, if any damage happens to Ship or Goods, the Master must answer.

III. Marriners must help one another at the Sea and Per Leg. Olein Port; if they resule, upon the Oaths of his Fellowes, ron, cap. 13. he loseth his wages. None of the Crew must or ought as per Leg. to leave the Ship without leave of the Master when the Denmarks. comes to a Port, or rides at Anchor, but always constantly to wait upon her till they are discharged, or have

leave, at least half to be left a ship-board.

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A Mara

Leg. nemo de Reg. jur. & leg. pleruma; di in jus voc.

A Marriner may not carry out of the Ship above one meals meat, but drink not a drop; and when a shipboard, ought not to be there arrested for debt, but onely so much of his wages in the hands of the Master attached: yet this is doubted if it be not on a sworn debt, that is, a Judgment or Sentence, or a penalty to the King.

They ought not to depart from a Shipboard when once admitted into their full pay, (which is always when they break ground,) without license of the Master; and before they may so do, they are to leave a sufficient

number to guard the Ship and Decks.

IV. If the Ship breaks ground, and is fet fayl, if after the arrives at her defired Port, their full pay continues till the returns; nor may they in any wife depart from a shipboard without leave or license of the Master; if they do, and any disaster happens, they must answer; yet at such Port if the Vessel be well moared and Anchored with two Cables, they may go without leave, yet so as they leave a sufficient number behind to guard the Decks; but then their return must be in due season; for if they make a longer stay, they must make satisfaction.

Lig. Olerons

V. If Marriners get drunk and wound one another, they are not to be cured at the charge of the Master or Ship; for such Accidents are not done in the service of the Ship; but if any of the Marriners be any wayes wounded, or do become ill in the Service of the Ship, they are to be provided for at the charges of the Ship; and if they be so ill as not fit to travil, they are to be left ashoare, and to take care he hath all accommodations of humanity administred to him: and if the Ship is ready for a departure, she is not to stay for him; if he recover, he is to have his full wages, deducting the Masters charges which he laid out for him.

VT. In case of Storm if Goods are cast over-board for lightning the Ship, the Oaths of the Marriners who swearing that it was done for the preservation of the Vessel and the rest of the Lading, the same shall dis-

charge the Master.

So Goods damnified at Sea, are cleared by the Oath of the

Leg. Oleron. Cap. 7.

Leg. Oleron,

the Master and Marriners, by the Laws of Oleron.

To affault the Master a shipboard, is a Crime that sub-Leg. Oleron, jects the Marriner's hand to be cut off, unless he redeems cap. 13.

at 5. Silz.

VII. If a Ship happens to be feized on for Debt or confolat. del otherwise to become forseited, the Marriners must re-Mare. ceive their wages, unless in some cases where the wages is forseited as well as the Ship; As if they have Letters of Mart, and instead of that they commit Pyracy, by B. R. Abr. reason of which there becomes a forseiture of all; but Bolls, so. 530. lading of prohibited Goods aboard a Ship, as Wooll, and the like, though it subjects the Vessel to a forseiture, yet it disables not the Marriner of his wages; for the Marriners having honestly performed their parts, the Ship is tacitly obliged for their wages; But if the Ship perishes at Sea, they lose their wages, and the Owners their Freight. And this being the Maritime Custom, is allowed by the Common Law as well as the Civil Law.

VIII. The Courts at Westminster have been very favourable to Marriners in order to their suing for wages, * Not but they for at the Common Law they cannot joyn, but must sue may, notwithall distinct and apart for their wages.

Yet in the Admiralty they may all joyn, and the Courts 8 Car. Cro. 3. at Westminster will not grant a prohibition *: And so it Reports, was Rul'd, where one Jones a Master of a Ship was which are not

fenten'd in the Admiralty for Wages at the Suit of now taken to Poor Marriners, a Prohibition being prayed upon a fuggeftion that the Contract was made at Land, and not fones versus super alium mare: The Court denyed it, for that he the Poor Marcaine too late, Sentence being given below against him: riners. Winch.

Yet if the Marriners had onely Libelled, and there had Rep. been no Sentence, and the Defendant had prayed a Prohibition as above, yet the Court would have denyed it.

And this has been and is usually done.

But the Court will be very well informed that the Libel is for Marriners wages; for some who work Car-situall & all penters work and such like labour aboard a Ship, in a Owners of a Haven or Port within the Realm which is infra Corpus Ship, versus Comitatus, (notwithstanding those great and ingenious Love & all Objections against it) and must be tryed by the Com-min B. R.

Cafe.

mon Law, and not else where,) will libel under that Cloak for Marriners Wages. But the Court in that case will grant a Prohibition. And so it was done in the like cafes.

But if a Ship rides at Anchor in the Sea, and the Master sends his Boat a shoar for Victuals or other provisions for the Ship, and accordingly the Providore or Latch fo. 11. the Slopp-feller does bring victuals and provisions B.R. Godfrey's aboard; in that case if the contract be made there, it must be sued for in the Admiralty: but if the goods are by the Purser or Marriners contracted for at land, they must sue at Common Law.

> IX. If Goods are so imbezled or so damnified that the Ships Crew must answer, the Owners and Master must deduct the same out of their Freight to the Merchants, and the Master out of the wages of the Marriners; for though Freight is the Mother of wages, so is it the very Father of Damage: For before the Marriner can claym his wages out of what the Ship hath earn'd, the Ship must be acquitted from the damage that the Merchant hath fuftain'd, by the negligence or fault of the Marriners: And the reason is, for that as the Goods are obliged to answer the Freight, so the Freight and Ship is tacitly obliged to clear the damage; which being done, the Marriners are then let in to their wages.

Leg. Oleron.

X. If a Marriner be hired, and he deserts the Service before the Voyage ended; by the Law Maritime he loses his wages: And the same Custom at Common Law pleaded, it has been conceived will bar him.

If a Marriner shall commit any wilful or negligent fault, by reason of which the Master, Owners, or the Ship answers damage to the Merchant, an Action lyes well against him.

XI. If a Marriner takes up Moneys or Cloaths, and the fame is entred into the Purser's Book; by the Custom Maritime it is a discount or a receipt of so much of their wages as the fame amounts to : and in an Action brought, by them for their wages, the same shall be allowed, and

is not counted mutual, the one to bring his Action for the cloaths, and the other for the wages.

XII. A Master of a Ship may give moderate and Pasch. 27 Car. due Correction to his Marriners, and if they bring an in B.R. Capt. Action against him, he may justifie the same at the Com-Pidgeon addiction. Marriner and by the Law of Oleron, if a Marriner shall assault the Master, he is to pay 5 Solz, or lose his Lig. Oleron, hand.

Marriners after they have unladed the Ship, if they demand their wages, and there be any intention of their Per Leg. Oleron departure, the Master may detain a reasonable proportion Cap. 18. of the same till they bring back the Ship, or give caution to serve out the whole Voyage.

XIII. Barratry of the Marriners is a Discase so Epidemical a shipboard, that it is very rare for a Master, be his Industry never so great, to prevent; a Span of Villany a shipboard soon spreads out to a Cloud, for no other cause but of that circular encouragement that one knavish Marriner gives to another.

However the Law does in such cases impute offences and faults committed by them to be negligence in the fusic de ob. Master; and were it otherwise, the Merchant would S. Fin.

be in a very dangerous condition.

a

The Reasons why they ought to be responsible, are, Pasch. II Jac. for that the Marriners are of his own choosing, and un-in B. R. Hernes der his Correction and Government, and know no versus Smith. other Superior a shipboard but himself; and if they Rolls Abridg. are faulty, he may correct and punish them, and justifie 530. the same by Law: and likewise if the fact is apparently proved against them, may re-imburse himself out of their wages.

MIV. And therefore in all cases wheresoever the Nant. caup. Merchant loads aboard any Goods or Merchandize, if Stab. Leg. 1. they be lost, imbezled, or any otherwise damnified, he Sect. 3.6 & 7. must be responsible for them: for the very lading them Slue, Pasch. aboard makes him lyable, and that as well by the Com- 23 Car. 2 in mon Law, as the Law Maritime.

B. R.

XV. Nay, if his Marriners go with the Ship Boat B b 4 Gloss. Super cod. Sett. verb. & Sattum. to the Key or Wharfe to fetch Goods a Shipboard, if once they have taken charge of them, the Master becomes immediately responsible if they steal, lose, damnifie or imbezle them.

XVI. The antient'st Record that is found extant, is that in Edw. the Third's time, where one brought an Action of Trespass against the Master for the imbezlement by his Marriners of 22 pieces of Gold, Bowe, Sheaf of Arrows, Sword, and other things; And adjudged he should answer. And for that the same is or may be of great moment, accept of a Transcript of the Record, as the same was certified into Chancery, in order to have it sent into the Kings-Bench, to enable the Plaintist obring an action upon the same Judgment in any place in England where he could meet with the Desendant.

Brevia Regis in Turri London. Trin. Anno 24 E. 3.num. 45. Briftol.

7 Enerabili in Christo Patri Dno 3. Dei gratia Wygorn Coffcopo Dhi Kegis Co. Cancellat bel ejus locum tenenti fui humiles, & bevoti Robertus Brene, Major Wille Briftol, Cowardus Mlanckett, & Johes be Cattlesacre Wallibi libertatem efulbem Mille, falutem cum Dmnia reverentia & honoze, De tendzi & Recordi & preffus loquelle que fuit coram nos bis in Cut Domini Regis ibm fine brebi inter Bent Wilk & Jurdanum Clenoze Magistrum navis boc la Graciane be Wayone in prito transgrels put p brebe Dni Regis nobis biredum fuit vos inde certificatur, fub Maillis neis bobis ft placer mitimus in hus Ceriptis. Ab placit Tols tent ibm bie Bartis pr polt feltum Epiphaniæ Domini anno Kegni Regis nunc 24. Bent Wilk quer opt. fe. berfus Jurdanum Menoje Bagis frum navis pocat la Graciane de Bayone de plito tranfarcis o pe ac. & unde quet, quod fecundum les deml'e consuctudinem de OLERON, unusquis soas gifter pabis tenetur respondere be quacung tranfat p fervientes luos in eabem fact, & Johes be Mule & . Wartolet ve Wornes Dervientes poiat Jurdani Bagis Beri nabis poice die Bercut pr' ante Festum Dmnium Sandozum Anno Begni poidi Megis Co. 23. in Pari furta Biftan : in cabem navi be Johanne De Cornut fervient

ferbient poict Bent 22. libr in auro arcus Sagit glab. e al bona e catalla ab balenc 40 l. ceperunt e asportas berunt injufte ec. ab bampnum poict Bent 60 t. e f poictus Jurdanus bor velit bedicere poict Bent paras tus eft berificare ac. Et poiaus Jurbanus benit a bis cit ab ler be Oleron talis eft ab fi aliqua bona e cas talla Magistro alicujus navis liberata funt custodiend. unde ibem Baciffer p eilbem bel p aliqua alia re in eadem nabi facta manucap illo modo Wagt nabis tes netur respondere, non alio modo, Et sup hoc petit. Audicium. Et poict Went vicit ab unulquiles Magiffer nabis tenetur relpondere de quacung transgrellione p Tervientes luos in navi lua fad, & petit Judicium amer. Et lup hoc poice pres babent biem hic Die Sabati pr' poft Feftum fci Billary pr' futur ab audiend fudicium Tuum ac. Ab quem biem poide ptes benerunt & pes tierunt Judicium fuum ec. Et recitat. Recogdo & pros ceffu poidis in piena Curia Cozam Pajoze & Ballis bis & altis probis hominibus Mille & Dagiffris & Das rinartis, vilum fuit Curie, quod unulquile Pagifter nabis tenetur refpondere be quacung transgrellione p fervientes fuos in navi fua facta, IDeo confideratum The Judgment eff, quod poirt Bent recuperet bampna fua 40 P. ofus in this cale is poict Jurdanum p Cut tarat & nichilominus ibem Law, and ought Jurdanus tranfarestione poida in mia.

not to have been a capia-

tur ; for it is not fuch a Trefpass as the King is entitled to a Fine. Vide 2 Cro. 224 Beedle versus Morris, 7 Jac. Co. Entries the same, 347.

XVII. The Master subject to answer damage, is to be understood in all such cases where the Lading was brought aboard either by his confent or his Purfers; for any other, or fuch as shall be fecretly brought in not be- Lee, I, in fin. ing entred in the Purfer's Book, or in the Bills of Lading, Naut. Caup. per the Master is not obliged to see forth-coming, unless it leg. it aque de be such Goods as the parties bring into the Ship about furlis. them, as Cloaths, Money and the like, as above, those things being feldome entred, yet most commonly are vitible, the Master by Law is responsible for.

Eod. Leg. in fin. Naut. Caup. & per Leg. itag; de cod. edict.

XVIII. So fikewise if a Master forewarn a Passenger to keep his Goods, and that he will no waves take care of them, and if they be loft or purloyned by the Crew, he will not be obliged to fee them forth-comeing; The Master is not there held responsible in case of a lofs, especially if there be any thing of an agreement thereunto.

Bartol. & Fafon in leg. non folum 6. mortem. de non oper.

Brand verfus

Glaffes, Sir

XIX. But if Goods shall be sent aboard a Ship, and the Master shall appoint a Cabin for the same, and deli-Francis Moore ver the Key to the Lader and tell him he will not be in the Exche- responsible if a loss happens; yet if the Goods are stole. Trin. 25 Eliz. he must notwithstanding make satisfaction: By the Vide the same Common Law it shall bind an Inn-keeper.

Book, Mich. 7 Eliz. poft. Worley's cafe.

antenna bar

Sileno bos

-Light to the

quer.

Note. That Goods once deliveced to a Master, the Cargo is not subject to be attached in his hands, nor can any Custome whatsoever support the same; for they are in Law as it were bayled to the Ship untill the Freight and all other charges are paid *: and very much doubted whether an Attachment can be made in London of any Goods at all lying a Shipboard in the Rivers of Thames, (which though the Port of London) notwithstanding Freight and all other charges are paid off.

CHAP.

CHAP. VI.

Of Freight, Charter-parties, and Demozage.

I. The various wayes that Ships may be Freighted at this day.

II. The ancient way of Freight-

III. How the same is governed upon the various Contracts, and of Accidents bappening to Maflers or Laders preventing the Voyage.

IV. Of Ships laded and unladed before the Voyage begun; Their becoming disabled, viz. perish in the Voyage before the same is compleated.

V. Of Ships departure considered as in reference to Freight and Damage.

VI. Of Freight arising on Trading Voyages, and lost by contingent action, considered by the Common Law, and the Law Maritime.

VII. Of Freight becoming due upon the various wayes of Contract, or general where none was agreed for.

VIII. Of faults arising from the

Freighters, and of the decease of the Ship, as in reference to Freight.

IX. Of Faults of Masters arifing from taking Goods more than were contracted for; And of being forc'd into Ports in his passage.

X. Passengers dying, the Ships title to their Goods and Concerns.

XI. The Ship in construction of Law, how far lyable to Freight.

XII. Ships taken and retaken in war, whether the same destroyes the Contract.

XIII. Goods become loft without fault of the Ship, whether Freight becomes due.

XIV. Of Freight contracted with persons deficient.

XV. Of Ships contracted for by the month to be paid at the arrival at a Port; Ship is cast away, the Goods saved: whether the Freight ought to be paid.

I. In the Freighting of Ships respect is alwayes had to the Ship it self, or else to a certain part there-of.

Again, The Merchants either Freight her by the Month, or the Entire Voyage, or by the Tun; for it is one thing to Freight a Ship, and another thing to take certain Tunnage to Freight.

So also it is one thing to be a Cape-Merchant, an-

other to be an under Freighter.

II. There

II. There was of old another way of Freighting. 21 E.3. Cottons which was when the Merchant agreed with the Mafter Abridgment of for a Sum certain to convoy the Goods enfur d against the Parliament Records, fo.63. all peril; such were to be responsible if any detriment or loss happened: but that is now become obsolete.

Nant. Caupo. S. quamcung; vim. Si quis navem conduxerit in-Arumenat confignata funto, Pekiens Com. ad leg. Rhod. Art. 20.

fo. 279.

Loca-

Per Leg. item.

S. Si in leg.

III. Freight is governed generally by the contract, Rab. &c. Leg. I. and varies according to the agreement, reduced generally into a Writing commonly called a Charter-party, executed between the Owners and Merchant, or the Master in the behalf of himself and Owners, or himself and the Merchant, or between them all.

The Master or Owners generally Covenant to provide a Pylott and all other Officers and Marriners, and all other things necessary for the Voyage; and for the

taking in and delivering out of the Lading.

19.

If there be an agreement and earnest, but no writing, Per Leg. Naval. if the same be broke off by the Merchant, he loseth his earnest; but if the Owners or Master repent, they lose double the earnest.

But by the Common Law of England the party damni-Mich. to Car. in B. R. Lang. fied may bring his Action of the Case and recover his don and Stocks damages on the agreement. cafe. I Cro.

If a time is appointed by the Charterparty, and either the Ship is not ready to take in, or the Merchant not ready to lade aboard, the parties are at liberty, and the party damnified hath his remedy against the other by

Action, to recompence the detriment.

If part of the Lading be a Shipboard, and it happens some missortune may overtake the Merchant that he hath not his full Lading aboard at the time, the Master is at liberty to contract with another, and shall have Freight by way of damage for the time that those Goods were aboard after the time limited; for such agreements are of a Conditional nature precedent, a failer as to a compleat Lading will determine the same, unless afterwards affirm'd by confent. And though it be no prudence for every Merchant or every Master to depart from the Contract if it should so fall out that the Agreement as to the Lading is not performed according to the Charterparty or agreement, (seldome ever done if any part be

aboard) yet it is the highest Justice, that Ships and Masters should not be infettered but free; for otherwife by the bare lading of a Cask or Bale, they might be defeated of the opportunity of Paffage or Seafon of the year.

So on the other hand, if the Vessel is not ready, the Mich. 10 Car. Merchant may Ship aboard in another Vessel the remain- in B. R. Lane, der of his Goods, and discharge the first Skipper, and don and stocks recover damages against the Master or Owners for the case, Cro. 1. rest : And this is grounded upon the like reason as the part, 279. former.

And therefore by the Law Maritime, chance or fome Per Leg. G ex other notorious necessity will excuse the Master; but conducto & then he loseth his Freight till such time as he breaks leg. si item ground : And till then he fultains the loss of the bac differetion

Ship.

But if the fault be in the Merchant, he then must an- Per Leg. Oleren fwer the Mafter and the Ships damage, or elfe be lyable cap- 21. to entertain the Ships Crem tendays at his own Charge; Artic. 25. Lebut after that, then the full Freight : and if any damage gum Navalium, happens afterwards, the Merchant must run the risque Art. 29, end. of that, and not the Master or Owners. But by the Common Law, fo long as the Master hath the Goods Rich. versus a shipboard he must see them forth-coming.

Kneeland, Cro. 2. part.

IV. If Goods are fully laded aboard, and the Ship Ad Leg. Rhod. hath broke ground, the Merchant on confideration afterwards refolves not on the adventure, but will uplade again; by the Law Maritime the Freight feems deferved.

But if the Ship in her Voyage becomes unable with- Jude. Oliran, out the Masters Fault, or that the Master or Ship be Ar- Lie. Mr. ad rested by some Prince or State in her Voyage, the Master Rhod. may either mend his Ship, or Freight another.

But if the Merchant will not agree to the same, then Digest. Paulus, the Freight becomes due for so much as the Ship hath 1. 14. 2.5. 10. earned: For otherwise the Master is lyable for all damage that shall happen. And therefore if that Ship to which the Goods were transladed perish, the Master shall answer; but if both the Ships perish, then is he difcharged.

But if there be extream necessity, as that the Ship is in a finking condition, and an empty thip is patting by or at hand, he may translade the Goods; and if that Ship fink or perishes, he is there excused: but then it must be apparent that that Ship seem'd probable and sufficient.

Leg. qui Roma S. Callimachus, ff. de verb. obl.

V. If a fet time be fixed and agreed upon between the Merchant and the Mafter wherein to begin and finish his Voyage, it may not be altred by the fupra Cargo without special Commission for that purpofe.

If a Master shall weigh Anchor and stand out to his Voyage after the time covenanted or agreed on for his departure, if any damage happens at Sea after that time. he shall refund and make good all such missor-

tune.

Ang. Alex. & Fason in dict. S. Callimachus.

N TO THE

If it is agreed that the Master shall sayl from London to Leighorne in two Months, and Freight accordingly is agreed on, if he begins the Voyage within the two months, though he does not arrive at Leighorne within the time, vet the Freight is become due.

Leg. Relagati ff. depunis & Leg. ult. ff. de Sep. vio.

VI. If a Ship is Freighted from one Port to another Port, and thence to a third, fourth, and so home to the Port from whence the first fayled, (commonly called a Trading Voyage) this is all but one and the same Voyage, fo as it be in conformity to the Charterparty.

A Merchant agrees with a Master, That if he carries his Goods to fuch a Port, he will then pay fuch a Trin. 9 Jac in Sum; in the Voyage the Ship is affaulted, entred and robb'd by Pyrats, and part of her Lading taken forth, and afterward the remainder is brought to the Port of discharge, yet the sum agreed upon is not become due, for the Agreement is not by the Master performed.

C. B. Rott. 638. Bright verfus Cooper. Brownlow 1. part. Mill Pality.

14. 2.5. 10.

But by the Civil Law this is vis major, or cafus fortuitm, there being not default in the Malter or his Marriners, and the same is a danger or peril of the Sea, which if not in Navall Agreement exprest, yet is naturally implyed: For most certain had those Goods which

Book 2. Of Freight and Charterparty.

which the Pyrats carried away in stress of weather Na- co. I. pare, 97. zis levande caufa, been thrown over-board, the fame Shelley's cafe. would not have made a disability as to the Receipt of Reniger and the fum agreed on; for by both the Common Law, and Plowden com. the Law Maritime, the act of God, or that of an Ene- But a Pyrat is my shall no wayes work a wrong in actions private,

not an Enemy. Vide Chap.

A Marie St. S.

Pyracy. VII. If a Ship be Freighted by the Tun, and the is Leg. Si quis full laded according to the Charterparty, the Freight is cod. de Justit. to be paid for the whole; otherwise but for so many & subflit.

Tun as the Lading amounted to.

If Freight be contracted for the Lading of certain Cattle or the like from Dublin to West-Chester, if some of them happen to dye before the Ships arrival at Welt-Chefter, the whole Freight is become due as well for the dead as the living.

But if the Freight be contracted for the Transporting Arg. Lig Site them, if death happens, there arises due no more Freight ff. de annu de then onely for fuch as are living at the Ships arrival at Eatis & legange illis libertis in

her Port of discharge, and not for the dead,

If the Cattle or Slaves are fent aboard, and no agree die; & alman. ment is made either for lading or transporting them, Arg: 7: but gennerally, then Freight shall be paid as well for the Lag. The open dead as the living.

If Freight be contracted for the transporting of Women, and they happen in the Voyage to be delivered of in. ff. locati. Children on Ship-board, no Freight becomes due for Leg. fed & ad-

the Infants.

The Charterparty does fettle the Agreement, and the quis mulirem f. Bills of Lading the contents of the Cargo, and binds the Mafter to deliver them well conditioned at the Bills of Lading place of discharge according to the contents of the alwayes made, Charterparty or Agreement; and for performance, the the one to be Mafter obliges himfelf, Ship, Tackle and Furniture to fent over Sea fee the same done and performed.

If Goods we fent aboard generally, the Freight mult Goods are be according to Freight for the like accustomed Voy- configned to.

ages.

If a Ship shall be Freighted and named tolbe lof fuch the last for the 2 Burden, and being Freighted by the Tun shall be Merchant or found less, there shall no more be paid than onely by Lader.

fin. ff. de conras & leg. fi ades S. cum. quidam & S. des in S. Si

There are 3. to him to whom the the other for

the Tun for all fuch Goods as were laded aboard.

If a Ship be Freighted for two hundred Tuns or thereabouts, the addition of thereabouts, is commonly reduc'd to be within 5 Tun more or less, as the moiety of the number Ten, whereof the whole number is compounded.

If a Ship be Freighted by the great, and the burden of it is not exprest, yet the sum certain is to paid.

Lee. venult. 6.

VIII. If the Ship by reason of any fault arising from-the Freighter, as lading aboard prohibited or unnovem F, de lo- lawful Commodities, occasions a detention, or otherwife impedes the Ships Voyage; he shall answer the Freight contracted and agreed for.

Trin. 9 Jac. B. R. Bright verfus Comper, Brownlow, I. Dart.

If a Ship be Freighted out and in , there arises due for Freight nothing till the whole Voyage be performed. So that if the Ship dye or is cast away coming home, the Freight outwards as well as inwards becomes loft.

Leg. Oleron: Leg. Naval. Rhod. Art. 25.

Leg. Oleron.

S. W. W. TO. in Sola

200 200

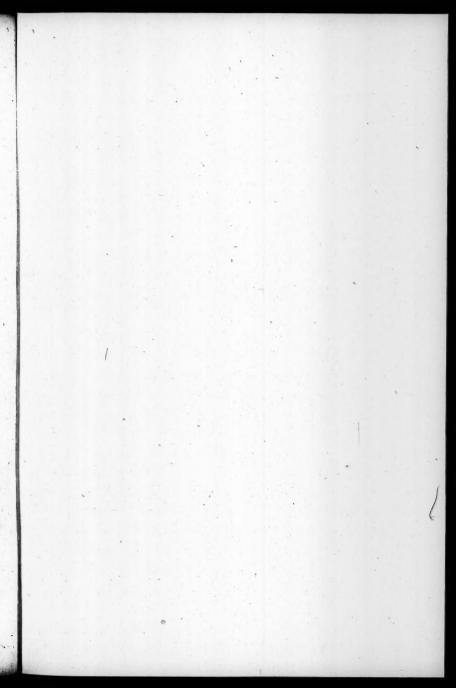
IX. If a Master Freights out a Ship, and afterwards fecretly takes in other Goods unknown to the first Laders, by the Law Maritime he loses his Freight; and if it should so fall out that any of the Freighters Goods should for safety of the Ship be cast over-board, the rest shall not become subject to the Averidge, but the Mafter must make good that out of his own purse : But if the Goods are brought into the Ship fecretly against his knowledge, it is otherwise; and Goods so brought in the same may be subjected to what Freight the Master thinks fitting. Confol, del Mere,

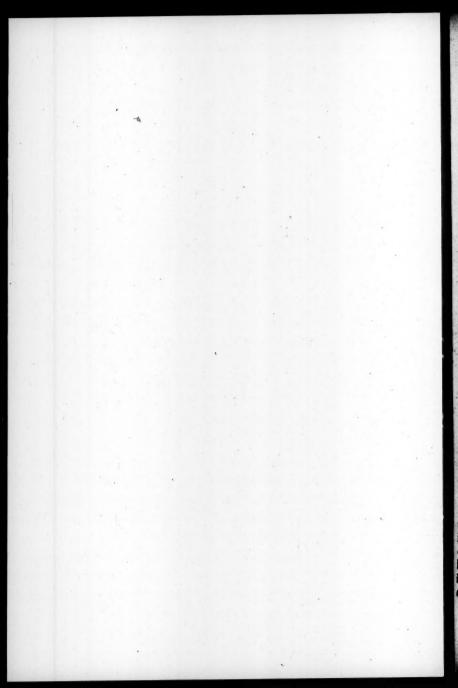
If the Ship puts in to any other Port then what she was Freighted to, the Master shall answer damage to the Merchant; but if forc'd in by fform, or by Enemy, or Pyrats, he then must sayl to the Port conditioned at his

own cofts.

Generally the touching at feveral Ports by agreement. imports not a diversity, but a Voyage entire.

X. If Passengers having Goods happen to decease a Ship-board, the Master is to Inventory their concerns, and the same may a year keep; and if none clayer the





fame, the Master becomes Proprietor deseazeable ; but the Bedding and Furniture of the parties become the Master and his Mates and the clothing are to be brought to the Ship Paft head , and there praifed and dittri- Lig. confoldt buted amongst the Crew, as a reward for their care of del mer.

feeing the body put into Sea.

XI. The Lading of the Ship in construction of Law Bald, in less is tacitly obliged for the Freight, the same being in point certi juris in of payment preferred before any other Debts to which 4. 2 is unb: the Goods to laden are lyable, though fuch Debts as to locat. time were precedent to the Freight; for the Goods remain as it were bayled for the fame : nor can they be Attached in the Mafters hands (though vulgarly is conceived otherwise.)

Ships deserve mages like unto a Labourer, and therefore in the eye of the Law the actions touching the fame are generally construed favourably for the Ship and her Owners: and therefore if four part Owners of Hill. 26, 27 five shall make up their Accounts with the Freighters and Car. 2. in B. R. receive their proportions, yet the fifth man my fue fin- Standy verfit gly by himself without joyning with the rest; and this

as well by the Common Law, as the Law Maritime,

XII. A Ship in her Voyage happens to be taken by an Enemy, afterwards in Battle is retaken by another Ship in Amity, and restitution is made, and she proceeds on in her Voyage, the Contract is not determined; though the taking by the Enemy divested the property 7 R.s. Steeles out of the Owners, yet by the Law of War that poffer. Abridg. 54. fion was defeazeable, and being recovered in Battle affion was defeazeable, and being recovered in Dattie at terward, the Owners became re-invested: so the Con-liminij leg. tract by fiction of Law became as if the never had been retor & leg. st taken, and so the entire Freight becomes due.

XIII. If Freight be taken for 100 Tuns of Wine; and 20 of them leak out, so that there is not above 8 inches from the Buge upwards, yet the Freight becomes due: One reason is, because from that gage the King Boyce werlied becomes entitled to Custome; but if they be under 8 Cole sen' & inches, by some it is conceived to be then in the Election Cole jan', Hill' of the Freighters to fling them up to the Master for in B. R.

Freight, and the Merchant is discharged. But most conceive otherwise, for if all had leaked out, (if there was no sault in the Master) there is no reason the Ship should lose her Freight; for the Freight arises from the Tunnage taken, and if the leakage were occasioned through storm, the same perhaps may come into an Averidge; Besides, In Burdaux the Master stows not the Goods, but the particular Officers appointed for that purpose, quad Nota, Perhaps a special convention may alter the case.

When fuch a misfortune happens, the Enfured commonly transfer those Goods over to the Affurors, who take them towards fatisfaction of what they pay by vertue of their fubscriptions.

Most certain, if a Ship Freighted by the great be cast away, the Freight vanishes; but if by the Tun or Pieces of Commodity, and she happens to be cast away, afterwards part is laved; doubted whether pro rata she ought not to be answered her Freight.

Affurors, who take them to with a Marriner that is not a Mafter, he must be contracting them of what tented to sit down without any remedy against the they pay by Owners; but perhaps such a Marriner for such act may vertue of their subject himself to an action.

But if there be a fault committed by a Marriner which was hired or put in by the Master or Owners, there for

reparation the Owners become lyable,

Co. 4. Infl, 146.

Johannes Locinius lib. 3.

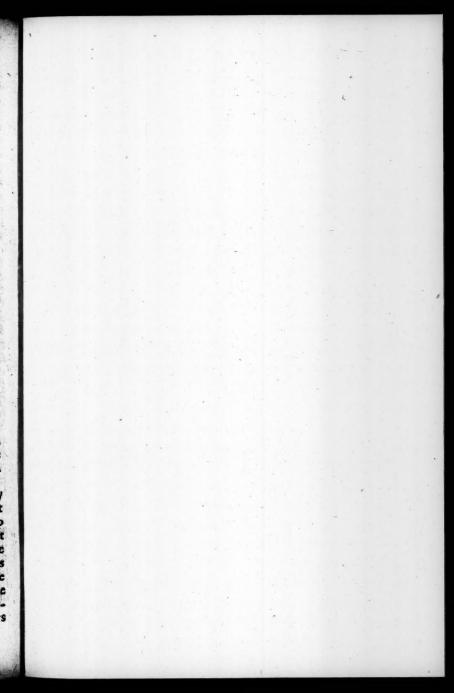
X V. The Master is not bound to answer Freight to the Owners for passengers if they are found to be unable to pay.

If a Ship by Charterparty reciting to be of the Burden of 200 Tuns is taken to Freight for a sum certain, to be paid at her return; the sum certain is to be paid though

the Ship amounts not to that Burden.

If a Ship is Freighted after the rate of 201, for every month that she shall be out, to be paid after arrival at the Port of London; the Ship is cast away coming up from the Downs, but the lading is all preserved; yet the Freight is become due: for the money arises due monthly by the Contract, and the place mentioned is onely to shew where payment is to be made, for the Ship deserves wages like a Marriner who serveth by the month; and though he dyes in the Voyage, yet his Exe-

cutors





cutors are to be answered provises: Besides, the Freight becomes due by intendment on the delivery or bringing up of the Commodities to the Port of London, and not

of the Ship.

If the Master enters into a Charterparty for himself and Owners, the Mafter in that case may release the Freighters without advising with the Owners; but if the Owners let out to the Freighters such a Ship whereof 7. S. is Mafter, though the Mafter Covenant in the same Charterparty and subscribes, yet his Release in that case will not bind the Owners, but the Owners release on the other hand will conclude the Master; And the reasonis, for that the Master is not made a proper party to the Indenture. And so it was Rul'd, where an Indenture of Charterparty was made between Scudamore and other Owners of the good Ship called the B. whereof Robert Pitman was Matter on the one party and Vandenstene on the other party; In which Indenture the Plaintiff did Covenant with the faid Vandensiene and Robert Pitman . and bound themselves to the Plaintiff and Robert Pitman for performance of Covenants in 600 l. and the Conclufion of the Indenture was .- In witness whereof the scudamore & faid Robert Pitman put his hand and feal, and delivered al' versus Pitthe same; in an action of Debt brought upon the Bond man. Trin. for performance of Covenants, the Defendant pleaded B. R. cited in the Release of Pitman; whereupon the Plaintiff demur- Co. 2. Inft. red: And it was adjudged, That the Release of Pitman to. 673. did not barr the Plaintiff, because he was no party to the Indenture. And the divertity in that cafe was taken and agreed between an Indenture reciprocal between parties on the one fide, and parties on the other fide, as that was; for there no Bond, Covenant or Grant can be made to or with any that is not party to the Deed but where the Deed indented is not reciprocal, but is without a Between, Oc. as Omnibus Christi fidelibus, Oc. there a bond, Covenant or Grant may be made to divers feveral perfons.

CHAP. V.

Df Wieck.

I. Of Goods wrecht as in relation to the alteration of the property by the Civil Law.

II. Of the preservation of Goods Wreckt, and the punishment of those that should add misery to the condition of such persons so distressed.

11.1. Of Goods Wreckt, their preservation according to the Laws of Oleron, and of England, and of the punishment of those that shall not make restitution.

IV. Of Contribution where the Ship perishes, and the Goods are all saved, and where not.

V. The King of Great Britain's
Prerogative as in relation to
Wreck and other Royalties of
the Sea.

VI. Of Flotsam, Jetsam and Lagan, where the King shall have the same, and whether by the grant of Wreck the same passes; and where a Subject may prescribe.

VII. Of Ships Wreckt and no Creature in them, yet no Wreck; and of Ships for alen, whether in Law accounted loft or wreekt, or neither.

VIII. Of the Sheriffs duty as in relation to Goods wrecht; and of Owners their time of claiming their property.

IX. Wreckt Goods not to pay Cuftome.

X. Of Wreck in the Isle of Wight, not in the Admiral without special words.

fortune, and them upon whose Lands the Goods and Merchandize are driven, that the same be restored to them, or those that claym under them. And therefore i. ne quid ff. de by the Civil Law it is precisely forbid, that no man intendio raina shall meddle with such Goods as are Wreck'd; and shall meddle with such Goods as are wreck'd; and such as are proved to have stolne any thing thereout, are holden for Robbers; for that such Goods being east

N matters of Wreck there is as it were a Contract between them which have loft their Goods by such mif-

on Land and recovered out of the Sea, remains fill his Leg. 44.D. de who whs the Owner thereof, and discend upon his Sucadq. ver. dom. cessor; neither Escheat to the King, neither to any other to whom the King hath granted such Royal Priviledge.

The

The reason why the Laws were so strictly declared by the Romans, was, for by the Lawes of Rhodes, if any Ship had become Wreck, though all the persons were saved and alive, yet the Ship and Goods became seizeable by the Lords: But the same being Barbarous, was afterward repealed and abrogated as well by those Emperours in their Territories, as here in England; the sirst by the Judgment of Oleron, which provided in such per le Judgmissortune, That if the Merchant, Marriners or Merment Oleron, chants, or any of these escape and come safe to Land, the Cap. 26, 47. same was not to be accounted Wreck.

The Emperour Constantine the Great sayes in this case, if any Ship at any time by any Shipwreck be driven unto the shoare, or touch at any Land, Let the Owner Leg. 1. lib. 11. bave it, and let not my Exchequer meddle with it: for C. de Naustawhat right hath my Exchequer in another mans Calamity, so gifs. that it should bunt after gain in such a woful case as this

is?

And yet if no Kindred appear within a year and a day, and appearing prove not the Goods shipwracked to be theirs, the Goods come to the Exchequer even by that Law: So much that Law condemns carelesness, which is written vigilantibus & non dormientibus. And with this agrees the Lawes of Oleron, and the Lawes of this Land, as taken out of those Imperial Lawes, in that

Point, as is conceived.

of the preserving the Goods of such miserable persons, deincend ruin, that if any should steal such, they should pay four-fold leg. in tum cum to the Owner, if pursued within a year and a day; and furt, as much to the Prince or his Admiral: So carefully were, Leg. 3. in sin. and so exact in requiring restitution, that the very steal-de incend. ruing of a Nayl or the worth thereof, obliged the Thies nauf. to the restitution of all the remaining Goods. And by the Emperour Antonius it was made a Law for such fort of men, that they should be batten'd and banish'd for 3. years; but that was onely for those of a high and Leg. pealbus Honograble rank: but those that were base and ignoted. ble, should be scourged and sent to the Gallies, or Metal Mines,

Cc3 And

Arg. leg. Succurlarij de Extrod. Crim. And the preventing of help to such shipwrackt perfons was punisht with the same suffering as a Murtherer.

The like for those that shall put forth any Treacherous Lanthorn or Light, with intention to subject them to danger or shipwrack, was punish'd with death.

Per leg. incend. ruin. Naufrag. Leg.napifcator.

And though no harm happens, yet he may be punished: hence it is that Fishers are forbidden to Fish with Lights in the Night, for sear of betraying of Saylors.

And here I

the Great and Pious Care that His Majestie hath had in his Directions about Light-Houses and Lanthorns, and other special Sea-Marks; but more especially in his Erecting at his own Princely charge that most excellent Light-House near Goldston by Yarmonth, which both for Height, Curiosity and Form, not inseriour if not excelling all or most in Christendome.

Per Leg. Oleron

But this good Law does not extend to Pyrats, Robbers, Sea-Rovers, Turks, or other Enemies to the Catho-

lique Faith.

Where a Man, Dogg or Catt escapes alive out of the Ship, neither the Ship or other Vessel, nor any thing therein shall be adjudged Wreck, but the Goods shall be saved and kept by the Sheriss, Coroners, or the Kings Bayliss, and delivered to the Inhabitants of the Town where the Goods are sound; so that if any within a year and a day sue for those Goods, and after prove that they were his at the time of the shipwrack, they shall be restored to him without delay; but if not, they shall be seized by the said Sheriss, Coroners or Bayliss for the Kings use, and shall be belivered to the Inhabitants of the Town, who shall answer before the Justices for the Wreck belonging to the King.

Where the Wreck belongs to another he shall have it in like manner, and if any be attainted to have done otherwise, he shall suffer Imprisonment, make Fine to

the King, and yield damage alfo;

If a Bayliff do it, and it be disallowed by his Lord, the Bayliff shall answer for it if he have wherewithall's but if not, the Lord shall deliver his Bayliffs Body to the King.

welm. v.c. 4. 3 E. 1. Naufragia ad publicanos pertinento.

The

The Lawes of Normandy agrees with this Law.

Cufm. Norm. Cap. 17.

IV. If the Ship perishes onely, and the Goods are 37 Leg. Naval. fafe, in that case the Goods ought to pay a proportion Rhod. & 40. of a 5th or 10th penny, according to the case or difficult winning or faving of the faid Goods; Rich Goods, as Gold and Silver, and Silk, pay less than Goods of great weight and cumber, being in less danger, unless it were a Wreck going into a Port, for which the Skipper was not bound for, there è contra, then the Skipper . is not to be confidered.

V. The King shall have Wreck of the Sea Whales, and great Sturgeons taken in the Sea and elfewhere throughout the whole Realm, except in places priviledged by the King.

V I. By the grant of Wreck will pals Flotfam, Jet- Sir Henry Con-Sam, and Lagan, when they are cast upon the land; but stables case, if they are not cast upon the land, the Admiral hath cole 5. part, Jurisdiction and not the Common Law, and they can- fo. 107. not be said Wreck.

Wreccum Mauris, are fuch Goods onely as are cast and

left upon the land by the Sea.

Flotfam, is when a Ship is funk or otherwise perish- Faber & alij

ed, and the Goods float upon the Sea.

Fetsam, is when the Ship is in danger to be funk, and for lightning the Ship, the Goods are cast into the Sea,

notwithstanding which the Ship perisheth.

Lagan vel Ligan, is when the Goods which are to Leg. 7. D. pro cast into the Sea before the Ship perishes, being heavy, derelisto. are by the prudence of the Master or Marriners, who have an intent to fave them fo funk; as that they may come at them again, in order to which they fasten a Buoy or other light matter that may fignific to them where they lye, if providence should bring them in a Condition to retake them.

The King shall have Flotfam, Jetfam and Lagan when F.N.B. 112. the Ship perisheth, or when the Owners of the Goods And Owners are not known; but when the Ship perisheth not, e peregrin com

contra.

munia de successionibus ac.

inft. de rer-

divis. Seff.

To dista C

- mile 30

A man per Leg. Oleran.

Co. s. part, 107.

A man may have Flotfam and Jetfam by the Kings Grant, and may have Flotfam within the high and low Water-mark by prescription, as it appears by those of the West Countries who prescribe to have Wreck in the Sea, fo far as they may fee a Humber Barrel.

Leg. 8. D. ad leg. Rhod.

de jactu.

VII. If a Ship be ready to perish, and all the men Co. 2. Isft. 167. therein for fafeguard of their lives leave the Ship, and after the forfaken Ship perisheth, if any of the men be fa-

ved and come to land, the Goods are not loft.

A Ship on the Sea was purfued with Enemies, the men for safeguard of their lives forsake the Ship, the Enemies take the Ship and spoyl her of her Goods and Tackle, and turn her to Sea; by stress of weather the is cast on land, where it happened her men arrived: It was Resolved by all the Judges of England, That the Ship was no Wreck, nor loft.

R.2. Pro willielmo Filhlake. Co.2.Inft. 167. Ice. 43. S.II. D. de furt. Pl. Com. 466.

VIII. If Goods are cast up as Wreck, and it falls out they be bona peritura, the Sheriff may fell them within the year, and the fale is good; but he must account to the true Owners.

Owners clayming the Wreck must make their proof by their marks or Cockets, by the Book of Customes, or by the Testimony of honest men; and if the Wreck belongs to the King, the party may fue out a Commission N.B. fo.12 to hear and determine, and that by the Oaths of twelve men.

Or elfe he may bring his Action at Law, and make out his proof by Verdict; but fuch Action must be brought within the year and day,

DD. diplo. & de Off . Admir .

Note, Flot sam, Jetsam and Lagan, are Goods on or in the Sea, and belong to the King, who by Charter hath granted them to the Lord Admiral.

Left unresolred in Moore, fo. 14. But fince adjudgcd Trin. 24°

IX. If Goods are Wreckt on the shoare, and the Lord having power, takes them, he shall not pay Cuftome:

Car. in C. B. upon a Special Verdict found at St. Edmonds-Bury in Suffelk.

The Admirals of England, ut magnus Admirallus; Angle, Hibernie, Wallie, ac Dominiorun & Infalarum
earundem Villa Califia & Merchiarum ejuschem nec non words of the Gasconia Aquitania, classium & marium dictorum regnorum Lord Howard's Anglia prefectus generalis; &c. which are the words of Patent, in their Patents used at this day, do claym all Wrecks 28 Eliz.in arising from any of those places, by vertue of their Rott, Admir. Grants.

X.King Edward the Second in the first year of his Reign, 1 E. 2. m. 6. by his Charter granted the Castle of Carisbrook, with all num. 6. the Lands and Tenements in the Ifle of Wight, formerly belonging to Habella Fortibus Countefs of Albemarle, to his great Favourite Peter de Gaveston and Margaret his Wife, and the heirs of their two bodies begotten, together with fundry other Castles and Lands, and commanded Nichoias de Bosco, to put him into actual posfession, and likewise commanded Robert de Sanfon Keeper of the Forrest of Parkburft in that Isle, to be intendent to them for the Farm he had granted him for life for the Cultody thereof, which being after foon refeifed into the Kings hands, he granted this Castle with all its Services, and all his Lands in that Itle to Edward his Pat: 20 E 2. Son and his Heirs Kings of England, and afterwards m. 10. intus for the accertaining what did of right belong to the pro Edwardo fame Castle, an Inquisition went out, by which it was found inter alia qu' metken maris pertinens ad didum Inquisitiones de Caftrum balet p ann 4 8.

Anno 47 H. 3.

So that by the general Patent of the Admiral will num. 32. not pass the Wreck of this Isle, without special words granted in the Patent.

Nose, If the Wreck happened, or was occasioned by Lte. 3. S. L. D. reason of any fault or negligence in the Master or Mar- 1. 1. S. 4. D. de riners, the Master must make good the loss but if the obl. & adl. leg. fame was occasioned by the act of God to avoid an 26. 5. 6. D. Enemy or Pyrat, and the like, there he shall be excu-mand. fed. it of w stances A aid this will no of the born of the

chi esmilito, regash bus mrofte al le hais con un luce Quiavis matiam & industriam bumanam superar, ness culpa casum præcesserie. aboard what he shall judge most bring for the o

CHAP. VI.

Of Averidaes and Contributions.

when subject to be cast overboard.

II. Of the Account rendred of such ejested Goods, and by whom.

III. Of the Antient Lawes of England as in reference to fuch Eieltments.

IV. What Goods must come into the Averidge, and what are exempt.

V. The Master discharged by such acts by the Common Law.

VI. The Ships Gears or Apparel whether within the Averidge.

VII. The residue of the Goods where tacitly obliged to answer the Averidge.

VIII. Of Goods remaining a shipboard spoyl'd by reason of the ejecting of others, where futject to the Averidge.

1X. where Ship and Lading are both made tyable to the Averidge.

I. Of Goods and Merchandize | X. Of misfortunes not subject to as Averidge.

> XI. Where the remainder of the Goods are exempted from the Averidge, and the damage of the ejected Goods falls on the Mafter.

> XII. Damage to the Ship where the Lading contributes, and the Standard rate in Contributions.

> XIII. The Master becomes a Captive for the redemption of Ship and Lading, where tyable to the Averidge, and where difcharged.

XIV. What Goods are subject to the Averidge.

XV. Contribution for Pylortage, and where the remaining Goods not subject to Averidge.

XVI. Rules general for settling the Averidge.

Leg. Rhod. de

I. C Hips being Freighted and at Sea, are often subject to storms, in which by the Ancient Lawes and Customes of the Sea, in Extream necessity the Goods, Wares, Guns, or what frever elfe shall be thought fit, may in such Extremity be flutig over-board; but then the Master ought to consult with his Marriners, who if they consent not, and yet the storm and danger continues, the Master may command not with standing, the casting overboard what he shall judge most fitting for the common fafety of the rest. TF If there be a super Cargo, a request ought to be made Les. Oliven, to him to begin first; but if he refuses, the Marriners cap. 8.

may proceed.

II. If the Ship so fortunes as to out-weather the Leg. confolato Storm, and in safety arrives at her Port of discharge, the del Mare. Master and the most of his Crew must swear that the Goods were cast over for no other cause but purely for the Safety of the Ship and Lading. The custome of clear-Artic. 38, 39. ing of that point varies according to the several Countries or places they arrive at.

III. King William the Conquerour, and Henry the First, Leges Guliet. 1. made and ratified, this Law concerning Goods cast over-& H. I. c. 98. board by Marriners in a Storm, in imitation of the An-legem Rhodiam.

cient Rhodian Law; de jact'.

Hi ego jecero res tuas de Pabi ob metum moztis de Seidin ad Ladhoc non potes me implacitare nam licet alteri damnum merum & Note
inferre ob metum moztis quando perículum edadere & Spici lezium
non potest. Et si de hoc me mesces, quo ob metum whelock de
moztis nil fecisse de comespriozai. Et ea quæ in nadi Priscis Anglorestant dividantur in communi secundum catalla, et si rum lezibus,
quis jecerit Catalla extra navim quando necessicas non so. 167.
exigerit ea restituat.

IV. The Ship arriving in safety, the remainder must come into the Averidge, not onely those Goods which Leg. 1. & 2. ad pay Freight, but all those that have obtained safety and leg. Rhod. & preservation by such ejection, even Money, Jewels and leg. Oleron. Clothes, and such like, are not exempted.

But those things which are born upon a mans body, Victuals and the like put a shipboard to be spent, are to-

tally excluded from the Contribution.

The Master ought to be careful that onely those things Lie. Wishieuns. of the least value and greatest weight be slung over-Artic. 20,21. board.

V. As this Law does take care that this common Calamity should be born by all the parties interessed by a general Contribution, so the Common Law takes notice of the missfortune, and makes provision to Indempnish the Master; and therefore if the party Owner of such ejected Goods shall bring an Action against the

Master

Df Averfores and Contributions, Book .

12 Jac. in B.R. Mafter or Owners of the Veffel, the Defendant may Bulftrod 2 part, plead the special matter, and the same shall barr the 290. Bird ver-Plaintiff. fus Aftcot.

Leg. I. ff. de exercitoria action.

234

VI. But if the Ships Gear or Apparel be lost by Storm, the same is not within the Averidge, but is accounted like unto a Workman breaking or spoyling his Tools; So for Goods fecretly brought into the Ship against the Master or Pursers knowledge, no Contribution is to be made, except in the avoiding of a danger, as the flinging of the Maft overboard, or the flipping the

L. amifa & Oleron.

Tow-Anchor or Boat.

Johannes Locimius lib. 2. cap. 7. de jattu. & 8. de contributione.

This order is observed generally in the rating the remainder of the Goods by way of Contribution.

If they chance to be cast over-board before half the Voyage performed, then they are to be esteemed at the price they coft; if after, then at the price as the rest or the like shall be fold at the place of discharge.

Leg. I, de Del mal. except. 6 de.

VII. As the Common Law looks upon the Goods and Cargo as a pawn or pledge for the Freight, fo the leg. Si non for. Maritime Law looks upon them likewise as a security tem de cond. in for the answering the Averidge and Contribution, and that the Master ought not to deliver the Goods till the Contribution is fettled; the same being tacitly obliged for the one as well as the other. Ad leg. Rhod. 1.2. Si non conservatis.

Leg. Navis 4. ad leg. Rhod. And Vinius Commentary, fo. 235.

VIII. If through the risling of the Sdip, or the casting or unlightning the Ship, any of the remaining Goods are spoyled either with wet or otherwise, the same must come in to the Contribution for so much as they are made worfe.

IX. If it falls out that a Ship entring into a Port or Channel cannot make way, and there by a lightning or

disburdning of the Ship, then the Contribution falls
Lie. 9, \$. 3. ad two parts to the Lading, and one third to the Ship,
exhib. except the Ship surpass in value the Lading, or that there is fome bad quality in the Ship it felf.

But to prevent that ambiguous Question, if the par-

ty Covenants that the Goods shall be delivered at the Lig. I verse Port Covenanted and appointed, then Condition makes and convenit Law.

and sobser of east

So for the Pylotts Fee and raising of the Ship off ground when there is no fault in the Master.

X. If two Ships happen to Encounter and Cross each Leg. quem and other, and the Crew Iwear their Innocency, Contribu- nodum parage tion must be made by a just equality; but if one pe- leg. Aquila. rishes, then can there be no proportion of the loss, so no Contribution. The reason that is given, for that otherwise a Skipper might of purpose set an old weak Ship against a strong Ship, and by that means hedge himself into a Contribution and recompence. However, this barrs not the Owners from bringing their Action against the negligent Master, by which means 18 H. 6. mun. he may recoope himself in damage, if it happens at Sea, the Action by the Civil Law is called Legis Aqui- 3. Inft. fo. 146. Le

Goodwyn ver-

If fuch a misfortune happens in the Night at Sea, has Tompkins, Noy Rep. the party if he will compleatly Arm himself for his recovery, ought to prove, that he made out Light or Fire, or other waves gave notice by crying or calling out.

XI. If it falls out the Ship or Veffel by the in- Lust Sernas discreet Stowing or Lading the Ship above the Birth- 27. 5. 5 Si. mark such ejection happen'd, in that case it has been 23. ad le. used by the Maritime Lawes no Contribution to be made, but Satisfaction is to be answered by the Ship, Mafter or Owners.

X I I. If to avoid the danger of a Storm, the Ma- Ad Reg. Rood, fter cuts down the Mast and Sayls, and they falling leg. 2. 5. Si into the Sea are loft, this damage is to be made good by confervatis. Ship and Lading pro rata: otherwise if the case happens by florm or other Casualties.

No Contribution is to be paid in case one Ship firike against another whereby damage happens, but full Satisfaction is to be answered the Merchant in case of fault and miscarriage in either; or an equal di-

vision of the damage, in case it happen by a Cosnalty. as above.

F. de leg.Rhod. lee. Nevis vis. ad leg. Rhod. de factu. Sir Francis

If a Lighter or Skiff, or the Ships Boat into which part of the Cargo is unladen for the lightning of the enufte. leg. Na- Ship perilh, and the Ship be preserved, in that case Contribution is to be made; but if the Ship be cast away, and the Lighter, Boat or Skiff be preferved, there no More, fo. 297, Contribution or Averidge is to be had, it being a Rule, No Contribution but where the Ship Arrives in Safety.

Leg. Rhod. de Factu, I. 2. Si Navis a Pyra-

part. 29.

end of the

39. Chapter.

XIII. If a Ship happens to be taken, and the Mafter to redeem the Ship and Lading out of the Encmies or Pyrats hands, promifes them a certain fum of money, for performance whereof himself becomes a Pledge or Captive in the Custody of the Captor; in this case he is to be redeemed at the costs and charges of the Ship and Lading, and money if there be any in her, are contributory according to each mans interest for his ranfome.

So where a Pyrat takes part of the Goods to spare the

rest, Contribution must be paid.

But if a Pyrat takes by violence part of the Goods. Moore 297. ple' 442. Hicks the rest are not subject to Averidge, unless the Merversus Palling-chant hath made an express agreement to pay it after ton. the Ship is robb'd.

But if part of the Goods are taken by an Enemy, or

Grotius de Inby Letters of Marque and Reprizal, è contra: trod. jure. Holl,

So likewise in storm, if the same is done for prefer-

Suctonius jure vation of the remainder. Nant. in the

> XIV. In Ejectment the Master or Purser of the Ship shall contribute for the preservation of the Ship, and also the Passengers for such Ware as they have in the Ship, be it Pearls, Pretious Stones, and fuch like ; and Paffengers that have no Wares or Goods in the thip, yet in regard they are a burthen to the thip, Eftimate is to be made of his and their Apparel, Rings and Tewels, towards a contribution of the loss; and generally all things in the ship except the Victualling and Provisions of the ship, and the bodies of men (unless Servants)

Servants) must bear a proportionable share in the Contribution.

The Estimate being made of the Goods lost and faved, the price is to be fet down not for how much they prefer at were bought, but how much they might be fold, at lee, Rhod, de the time when the Ejectment was made; and if any jatt. fo. 196, thing be flung into the Sea and endamaged, and after- 197, 198. wards is recovered again, yet contribution is to be made onely for the damage.

X V. Contribution is to be paid for the Pylot's Fee that hath brought a Ship into a Port or Haven for her fafeguard, (it being not the place she was designed for) fo to raife her off the ground when there is no fault in the Master.

If a Mafter of a Ship lets out his Ship to Freight, and Gratius Introd. then receives his compliment, and afterwards takes in jur. Holl. 3. 29. Goods without leave of the Freighters; and a Storm Vinius and arises at Sea, and part of the Freighters Goods are cast mentaries on over-board, the remaining Goods are not subject to the the Laws of Averidge, but the Master must make good the loss out Rbodes, 236. of his own purfe.

The Goods which are lost are to be valued, then the Goods faved are to be estimated, which being known, a proportionable value is to be contributed by the goods faved, towards reparation of the goods ejeded, or cast over-board.

In which regard is alwayes had, not to what might Lotinus, lib. 2. be got by the Goods loft, but what the intrinfick da- Chap. 8,9,10, mage is by the loss of the same; the which are not to 11. be estimated what they might have been fold for, as what they coft or were bought for.

But now the custome is general, the Goods faved The Custome and loft, are estimated according as the Goods faved of Places vawere fold for; Freight and other necessary charges be- ries this Modus ing first deducted.

If there were Plate, Jewels or the like in a Trunk, done by Mer-Cheft, Pack or Bale, at the time of their Ejection, if chants and there be a Super Cargo he ought to give notice by dif- Marriners incovering of the same to the Master or Marriners, other-nominated by wife he shall be answered in the Contribution no more the Court.

of Estimating; the which is

S. ult. Inst. de rer. divif. & teg. 9. 5. ult. de acq; rer. Dom.

Ad Leg. Rhod. then the bare extrinsick value appeared to be ; but the Affurors will hardly fare fo well.

If Contribution thall be fetled, and the Merchant will not agree, the Master may detain the Lading, for the fame is as tacitly obliged to answer that as the Freight; And if at the Common Law the Merchant should bring an Action, the Defendant shall bar him by pleading the special matter.

If Goods are cast over-board, and afterwards are recovered; Contribution ceases, saving for so much as they are damnified and made worse by reason of such Ejectment.

Note, Goods cast overboard to lighten the ship make no derelist.

And though such necessity seems to subject the Lading to Ejectment to prevent the ruine and defiruction of the persons, yet some Lading seems excepted, and therefore Canon and other Inftruments or Provisions configned to relieve a City, ought not to be flung overgium non valet board; for in such case the Law imposeth on every contra rem pub- subject, that he prefer the urgent Service of his Prince, before the fafety of his life.

but much believe Blee on the total of the English statum and tree he a side of the color of the property of the color caveling of the tractor Mantners circle nominated by will be final in a word in the Continuous or more the corre

ff. Ibid. leg. Navis, S. cum autem.

Leg. 25. D.

de prob. leg.

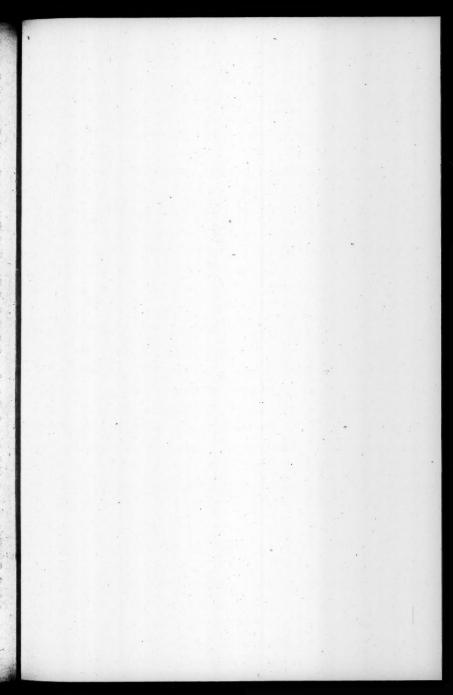
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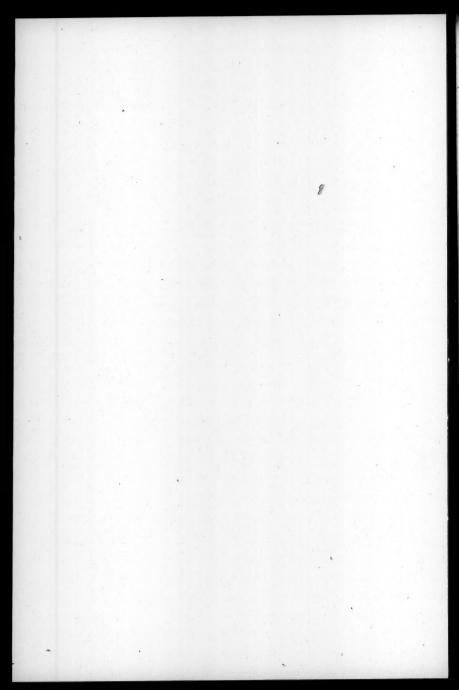
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CHAP. VII.

Of Pollicyes of Affurance.

1. Affurances by whom first intro- | XII. A man Ensures more than

II. Affurances and the nature of

III. How esteemed of by Law. IV. The various wayes of Ensure-

ing, and on what.

V. Affurance when efteemed most dangerous, and of fraudulent Pollicyes.

VI. Of the Receipt of Preimio, and the custome of abatement on loffes.

VII. Pollicyes that now ensure against all the Accidents of Heaven and Earth.

VIII. A Ship Ensured generally, whether the same includes the Cargo; and whether it is necesfary in the Pollicy to mention the particular Goods.

1 X. If the Mafter is discharged of the damage, whether the En-Jurer may be made-lyable.

X. A Ship Ensured from a Port, and the is burnt before ber departure, whether the Affurers are made lyable.

XI. Goods Ensured in one Ship, are afterwards in the Voyage, put into another, the second miscarries, whether the Affurors are made lyable.

the value of the Cargo, the Cu-Stome in such case.

XIII. A Ship is Ensured from one Port to another, and there to be landed; the Cargo after arrival is fold, and before landing is burnt, whether the Afarors shall be made answerable.

XIV. A ship Ensured from one Port to (blanck) being in time of warr) taken, whether the Affarors (ball answer.

X V. Of the Ensureds renouncing after a loss; and what operation the same has by custome.

XVI. of the Office erected by the Statute of 43 Eliz. what powers of the furifdictions claymed by those at Common Law and the Admiralty.

XVII. what power and authority was given by the Statute of 43 Eliz. to that court.

X VIII. What things it was deficient in ; and holpen by the Statute of 14 Car. 2. cap. 23. and of their authority and power general at this day.

XIX. Of the advantage that seem to accrew to publique Affurances, different from private

T is conceived by Suetonius, that Claudius Cefar was in vita claud. the first that brought in this Cultorne of Affirance, cafar, lib. 25 by which the Danger and Adventure of Voyages is di- c. 18. vided, repaired and born by many persons, who for a certain fum by the Spaniards called Premio, affure Ship

Salisd. cog. Grotius de jure Belli ac Pacis. lib. 2. cap. 12. 5. 3. in fin.

* Leg. 1. ff qui Goods, or both, or a proportion, according as the Pollicy is.*

> I I. Assurances are either publique or private; Publique, when they are made and entred in a certain Office or Court; commonly called the Office of Affurance in the Royal Exchange in London; and the same are called publique, for that it is free for any man to refort and fee what another hath affured upon his Adventure.

> Private is, when an affurance is made, but the Enfured keeps the same secret, not deeming it fit that any should see or know their Cargoe or Adventure, or what Premio they have given, or affurance they have made; and the same being never entred in the Office, is known

by the name of a Private Affurance.

III. By the Common Law they are both of the same validity, as in reference to obtain Satisfaction from the Ensurors, if loss or damage should happen to the Adventure.

43 Eliz. cap. 12.

But by the proceedings erected by Statute of 43 Eliz. Cap. 12, onely those that are entred in the Office of that Court, can be sued or determined there.

IV. Assurance are of various forts, some being to places certain, others general; those that are made to Lig. 4. 5.D. de places certain, are commonly upon Goods laden or to be laden aboard outward, and untill the same Adven-

Naut. fan.

Or upon Goods laden or to be unladen homeward in fuch a Ship till the Adventure shall likewise be landed. Or else upon Goods out and in, with liberty to touch

ture shall be laid ashoare at such a Port.

Fohannes Locinius, lib. 2. cap. 5. 5. 5.6.

at fuch Ports as are mentioned in the Pollicy. So likewise on Ships that go Trading Voyages, as Round to Cales; and that it shall be lawful after the Ships delivery there, to take in at the same Port another Cargoe, and with that proceed to the West-Indies or other parts, and back again to Cales, and from thence to London, this Pollicy being general and dangerous, pro-

cures seldome subscriptions. As Goods and Merchandize are commonly Enfured, fo likewise are the Ships Tackle and Furniture, but in regard there seldome happens a Voyage but somewhat

Sautor. p. 3. num. 13.feq.43. Seg7.

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is miffing or loft, the Premio commonly runs higher then for Merchandize.

Assurances may be made on Goods sent by land, so

likewise on Hoyes and the like.

V. Those Affurances are most dangerous when there if such Ensurare these words inserted lost or not lost; which is com-rance be made monly done when a Ship hath been long missing and in the Office, no tydings can be had, the Premio especially in time of they then set warr will run very high, sometimes 30 or 40 per Cent; when intima-and though it happens at the time that the subscription rion is given is made the ship is cast away, yet the Assurors must and of the loss. swer-

But if the party that caused the Assurance to be made Locinius, lib. 2: faw the Ship wreckt, or had certain intelligence, such cap. 5. 5. 9; subscription will not oblige, the same being accounted 10.

a meer fraud.

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at is So likewise if the Assured having a rotten Vessel shall affure upon the same more then she is worth, and aster- Arthur Stockwards give order that going out of the Port she should den of Stockbe sunk or wreckt; this will be fraudulent, and not obden's Case. Mich. 26 Care. Lige the Assured answer.

convicted by Information for the Fraud, Term. Sancti Hillarij fequen. in B. R. Vide Livius, lib. 25.

VI. Few or scarce any Ensure the whole Ship, but The Subscriptions being for Sums certain, as 50 l. or fion mentions 500 l. at the Premio then current, which when the Admio had been venture is born they receive; but if a loss happens, the actually refermio is deducted together with the usual abatemate; ceived, but it so that the Ensured receive much about 80 per Cent, if is seldome a loss happens.

VII. The Policyes now adayes are so large, that bourn almost all those curious Questions that former Ages and the Civilians according to the Law Maritime, nay and the Common Lawyers too, have controverted, are now ut que in ndout of debate; scarce any missortune that can happen, or ves impessual provision, to be made, but the same is taken care for in temperatiss; vista the Pollicyes that are now used; for they Ensure against public vision. Negotia

toribus certa luora propositi suscepto in se damno, se cui quid per tempestates accidiffet, Livius lib: 23. c. 24. Vide Zasius in Commentario ad Digesta, tit. pro Socio. n. 25.

Dd 2

Heaven

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* Sub nomine Heaven and Earth, Stress of Weather, Storms, Enepericuli, de quo mies, Pyrats, Rovers, &c. or whatsoever detriment shall fit cautio, comhappen * or come to the thing Ensured, &c. is provided prehenditur omnis casus qui for.

accidit in maris, à tempesate, ab hostibus pradonibus, Reprasalis ut, vocant arrestis alifa: modis usitatis & innsitatis citra fraudem & culpem contrabentium, aut domini

mercium vel navis. Grotius de jure Holl. 24.

Locinius, lib.2. VIII. If a Merchant Ensures such a Ship generally, cap. 5 \$.75 \$9 and in the Pollicy it is expressed of such a Burthen, the Ship happens then to be loaden and after miscarries, the Ensurer shall not answer for the Goods, but onely for the Ship.

It matters not in the Pollicy whether the particular Wares and Goods are named, but generally upon the principal Wares, and all other Commodities laden or to be laden for the Ensured or for his account, or for

any other.

X. If a Ship be Ensured from the Port of London to Caler, and before the Ship breaks ground takes fire, and is burnt, the Affurors in such case shall not answer, for the Adventure begun not till the Ship was gone from the Port of London; but if the word had been, at and from the Port of London; there they would upon such a missfortune have been made lyable.

Note, The Port Is such an Assurance had been from London to Cales, of London exof London extends from the and the Ship had broke ground, and afterwards been North Foreland driven by storm back to the Port of London, and there in the Isle of had took fire, the Ensurers must have answered; for the Thanes, over very breaking of ground from the Port of London was in a Line to an inception of the Voyage.

Effex, and from thence to London-Bridge. Rorulo, Scaccarij 19 Car. 2.

X I. If Goods are Enfured in fuch a Ship, and af-That has been terwards in the Voyage it happens the becomes leaky much doubted; and opiand creazy, and the Super Cargoe and Matter by confent nions of the become Freighters of another Veffel for the fafe delivery Court hath of the Goods; and then after her relading the fecond generally enclined against Vessel miscarries, the Affurors are discharged : But if the Affurors. there be these words, The Goods laden to be transported Leg. ult. ad and delivered at such a place by the faid Ship, or by any, Khod. Digelt Paulus, other Ship or Veffel until they be fafely landed, then the 1.14.tit.2.5.10 Ensurers must answer the misfortune.

XII. If a man Enfures 5000 l. worth of Goods, and he hath but 2000 l. remitted, now he having en-Vide Grotius fured the real Adventure, by the Law Maritime all the Introd.jur. Holl. Affurors must answer pro rata. But by the opinion of 212.23. And some, only those first Subscribers who underwrit so the Custome much as the real Adventure amounted to, are to be made of Merchants lyable, and the rest remitting their Premio 10 s. per Cent, then Law. deducted out of the same for their subscriptions, are to be discharged.

XIII. A Merchant Ensures his Goods from London Locinius lib.2. to Sally, and there to be Landed; the Factor after ar- cap.5.5.9. And rival having opportunity fells the Cargo aboard the by the Lawes rival having opportunity tells the Cargo about the of Antwerp, fame Ship without ever unlading her, and the buyer there is a time agrees for the Freight of those Goods for the Port of allotted after Venice, before the breaks ground, the Ship takes fire, the Ships arrithe Assured is absolutely without remedy; for the pro- val at her Port perty of the Goods becoming changed, and Freight advenure is being contracted de novo, the same was as much as if the to be born by Goods had been landed. the Enfurers,

And so it is if the Factor after her arrival had con-which is about tracted for the Freight to another Port, and the Ship 15 dayes. Art. had happened to take fire, the Affurors are hereby ab-Antwerp.

folutely discharged for ever.

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XIV. If a Ship be Enfured from London to Cafe of Monand blank being fo left of purpose by the Lader to pre-fieur Gourdan. vent her surprize by the Enemy, in her Voyage she hap-Governour of pens to be cast away, though there be private Instructi- 1580. ons for her Port, yet the Enfured fit down by the loss by reason of the uncertainty.

X V. After notice of loss, the Ensured, (if he doth think fit) for that he hath Ensured the most of his Ad- Locin'us, lib.2 venture, or that he would have the affistance of the Af- cap. 5. 8. 8. furors; when there is hope of recovery of the Adventure, he may then make a Renunciation of the Lading to the Assurors, then he comes in himself in the nature of an Enfurer, for fo much as shall appear he hath born the Adventure of beyond the value Enfured.

Sub nomine pe-

riculi, de quo

nibus reprisa-

liss ut vocant

arreftis alija;

prebenditur

But if the Merchant shall not renounce, yet there is a power given in the Pollicy for him to travail, purfue and endeavour a recovery (if possible) of the Adventure after a misfortune to which the Affurors are to contribute, the same being but a trouble to give ease to the Asforors.

If prohibited Goods are laden aboard, and the Merchant enfures upon the general pollicy, which alwayes contains these words; Of the Seas, Men of Warr, Fire, Enemies, Pyrats, Rovers, Thieves, Jettezons, Letters of Mart ; and Covenants, Arrefts, Restrainment and Detainments of Kings and Princes, and of all other persons; Barratry of the Master and Marriners, and of all other perils; losses and misfortunes whatsoever they be, and howsoever they shall bappen to come, to the hurt and detriment of the Goods and Merchandize, or any part or parcel thereof; whether if such Goods be lawfully seized as prohibited fit cautio, comgoods, the Ensurors ought to answer? It is conceived they ought not; and the difference hath been taken, omnis casus qui where Goods are lawful at the time of Lading to be accidit in mari, a tempestate, ab imported into that Country for which they are confignbostibus predoed for, but by matter ex post facto after the lading they become unlawful, and after arrival are feized, there the Affurors must answer, by vertue of the Clause, And all other perils, &c. But if the Goods were at the time of lading unlawful, and the Lader knew of the same, such Affurance will not oblige the Affurors to answer the domini mercium loss; for the same is not such an Assurance as the Law vel navis. Gro- supports, but is a fradulent one.

modis usitatis eitra fraudem, trabentium aut tius de introd.

jur. Holl. par. 24. In boc contractu bona fide versandum eft, ut natura ultro citrog, obligationis postulat. Locinius, lib. 2 cap. 5. 8.

+ 12 Car. 2. cap. 32. 14 Car. 2. cap. 7, 18. 4 12 Car. 2. cap. 18.

So it is if a Merchant will Freight out Wooll, Leather f and the like, or fend out Goods in a Forraign bottome * and then make a Pollicy, the Ship happens afterwards to be taken, by reason of which there becomes a forfeiture of Ship and Lading; the Enfurers are not made subject to answer the damage: for the very Foundation was illegal, and the Law supports only those Affurances that are made bona fide, for if otherwise, and men could be Ensured against such actions, actions, they would destroy Trade, which is directly to thwart the institution and true intentions of all Pol-

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But if Goods should happen to be lawfully Ensured, and afterwards the Vessel becomes disabled, by reason of which they relade by consent of the super Cargo or Mer-Rittershus. and that into another Vessel; and that Vessel, after arri-23. de Reg. jur. val, proves the Ship of an Enemy, by reason of which cap. 18. p.g. the Ship becomes subject to seizure: yet in this case the 236, 237. Ensurors shall answer, for that this is such an accident Stypman dieto as is within the intention of the Pollicy.

Several men lade aboard Salt, without distinction, not putting them in Sacks, and the like; the Ship arrives, the Master delivers to their Principals according to their Bills of Lading as they come one by one, it falls Hill. 11 Jac. in out that some of the Salt is washt or lost by reason of and Tomlinsons the dampness of the Ship, and that the two last men Case, Hobart cannot receive their proportion: There are in this case 88.

these things to be considered.

1. Whether the Master is bound to deliver the exact quantity?

2. Whether those that have received this loss can

charge the Affurors?

 Whether the Affurors can bring in the first men for a contribution, they having their Salt delivered to them compleatly.

Certainly the Master is not bound to deliver the exact Inst. in pr. quib. quantity, nor is he obliged to redeliver the very specification. The concal Salt, but onely as men are to repay Money or Corn si cert peti. by the distinction in a Bagg or Sack, and out of them; but if the fault was in not pumping, keeping dry his Leg. quod con-Deck, and the like, there è contra: though perhaps there venit de verb. may be special agreement.

Besides, there is a peril of the Sea against which the Master could not prevent, and of necessity he must de-

liver to one first before another.

As to the fecond, It is no question but that the Assurors shall answer. But whether they shall bring in the first men for contribution, may be some doubt.

Dd 4

Book 2.

D. Leg. in mo-

It has been conceived by fome, that they ought not, for they delivered their Salt to the Matter tanquam in Creditum, and was not to expect the redelivery of the specifical Salt: Besides, the Master must of necessity deliver to one man before another.

But by others it has been conceived they ought to contribute per ratione, for as Goods of necellity some must be stowed in the Hold, and that such Goods seldome fail without a peril of the Sea; so the rest must of necessity contribute to that missortune, and so make no distinction.

The Bills of Lading are very useful to settle the difference between the Assuror and Assured, of which there are 3 parts, one sent over Sea; the other lest with the Master; and the last remaining with the Lader.

XVI. The Office of Assurance was Erected by the Statute of 43 Eliz. Cap. 12. which reciting, That whereas differences growing upon Pollicyes of Affurances had been ordered by discreet Merchants approved by the Lord Mayor, who did speedily decide those causes, untill that of late years divers persons did withdraw themselves from that Arbitrary course, and have sought to draw the parties Affured to feek their Moneys of every several Assurer by Suits Commenced in her Majesties Court to their great Charges and delay; whereupon it was Enacted, That the Chancellor or Keeper for the time being should iffue forth a standing Commission (to be renewed yearly, or as often as to him shall feem meet,) for the hearing and determining of all such causes arifing on Pollicyes of Affurance as shall be entred in the Office of Affurance in London.

The Judges or Commissioners appointed are the Judges of the Court of Admiralty, the Recorder of London, two Doctors of the Civil Law, two Common Lawyers, 8 grave and discreet Merchants, or to any 5 of them; and that they or the greatest part of the Commissioners have power to Hear, Examine, Order and decree all such causes in a brief and summary way

without formality of pleading.

They have power to summon the parties, examine witnesses upon Oath, commit to prison upon resusal of

obcdience

obedience to their Decrees; they are to meet once a week at the Assurance Office, or some other convenient publique place, and no Fees at all are to be exacted by

any person whatsoever.

There lyes an Appeal from their Sentence to the Lord Chancellor or Lord Keeper (but the party must deposite the moneys decreed, and then (though the party be imprisoned he may be discharged) and then it lyes in the Lord Chancellors or Keepers Breast to affirm or reverse, and to award the party assured double costs.

No Committioner being party Assurer can act by vertue of this Commission, nor until he hath taken his Corporal Oath before the Mayor and Court of Aldermen. To proceed uprightly and indifferently between

party and party.

X V I I. This was a good Act, had it been as carefully penn'd as was intended; for there were many things

in which this Act did not extend to.

First, Any man may at this day make a private Pollicy notwithstanding this Act, which is as good and effectuall in Law to all intents and purposes, as one made and entred in the said Office; and that such a Pollicy might and may be now sued at the Common Law.

Secondly, The number of Commissioners being so great that there could be no Court without 5, at the least; and without a Court they neither could summon parties or examine witnesses, and that was very difficult

to get.

Thirdly, If the parties or witnesses refused to appear, they had no power to punish the party for the delay, with costs or otherwise, which was very mischie-

vous.

Fourthly, No Commissioner could fit before he was sworn: Commissions and the Commissioners being often renewed, it was a trouble to be attending a Court of Aldermen, which was dissicult sometimes of the year to get.

Fifthly, Though they had power to commit the party who refused to obey their Decree, yet they had

no power to make any Order against the Ship.

Which

14 Car. 2. cap. 23.

Which matters being taken into confideration, it was Enacted, That 3. Commissioners, whereof a Doctor of the Civil Law, and a Barrifter of 5. years flanding to be one should make a Court, and to act as any 5, before might have done.

They have likewise power now given them to summon parties and witnesses, and upon contempt or delay in the witnesses upon the first summons and tender of reasonable charges: and in the parties upon the second

fummons to imprison offendors or give costs.

Every Commissioner is now to take his Oath before the Lord Mayor to proceed uprightly in the execution of the faid Commission; and any of them may adminifter an Oath fo as the adverse party may have notice, to

the end fuch persons may be fairly examined,

Commission may issue out of the Court of Admiralty for examining of witnesses beyond Seas, or in remote places by directions of the Commissioners, and Decrees may be made against body and goods, and against Executors and Administrators, and Execution accordingly; and affess Costs of Suit as to them shall feem juft.

But Execution cannot be against Body and Goods for the same debt, but the party must make his Election as

at the Common Law.

Oyles versus Mar hall, Styles Rep. 1654.

XVIII. But these Statutes took not away that Cognizance which the Courts at Westminster claymed upon fuch Contracts by the Common Law; but onely gave this new erected Court a concurrent Jurisdiction with those at the Common Law: for though the loss happened out of the Realm, yet they had Jurisdiction of the And therefore if an Action is brought upon a Caufe. coke lib. 6. fo. Pollicy of Affurance, though the loss happened at Sea, 47.36 Eliz. in yet the Jury shall enquire; for the loss is not the direct ground of the Action, but the Assumplit.

The Admiralty have likewise put in if not for an absolute Jurisdiction, yet at least a concurrent one; yet both have been denyed them, notwithstanding that the Judge of the Admiralty is Judge of the Court of Affurance.

XIX. By the making of an Office Pollicy according to the Statute, these advantages will follow.

38 . 8. Crane and Beil, Co. 4. Inft. 138., 139.

B. R.

Dowdales cafe,

1.If

r. If the Pollicy be lost, if the same be entred with the Register of the Office, the Entry is effectual to answer the matter both at the Common Law, as well as in the same Court; but a private Pollicy lost is like a Deed burnt, unless that there be very strong evidence, as a Copy and the like, it will be of little value. So that then there will remain nothing but an Equitable relief in Chancery, for the satisfaction of the party.

2. If a man Freights out a Ship from London to Cales, and affures here, he may write to his Correspondent to make an affurance there of the same; if the matter comes before Commissions, they may examine the Ensured upon Oath, and determine therein according to Law and the Custome of Merchants: but at the Common Law the same cannot be, but relief must be had in that

point according to Equity in Chancery.

3. The same is a Court of Equity as well as a Court

of Law.

g If 4. They may decree against 20 Assures at one time, but at Law they must be sued distinctly; but they cannot compel the Desendants to put in Bayl.

5. They may proceed out of Term as well as in Term; and (if the matter will bear it) they may finish

a Cause in a fortnights time.

6. The Judgments there given are generally upon mature deliberation, and by reasons well skilled in Maritime affairs; and if their Sentence is thought to be unreasonable, the Lord Chancellor or Lord Keeper may on Appeal determine the same.

CHAP.

CHAP. VIII.

Of Prilage and Butlerage.

I. what is Prisage, where taken, and of what.

II. Merchant Strangers exempted from the same.

III. When due, and the exemption of the Citizens of London from the same.

IV. What Citizens are capable, and where not.

V. A Forraigner imports and makes a Citizen Executor and dyes; whether he shall have the benefit of the Immunity.

VI. where a Forraigner fells to a Citizen before, but he broken, the

Vendee shall be chargeable.

VII. Where a Grant to discharge a particular Ship shall be good; and where a Grant to particular persons shall be otherwise.

VIII. Of Butlerage what and whom are exempted.

IX. Where the King becomes enti-

X. A Grant to be free of all Cuflomes, Impositions, &c. extends not to Prisage and Butlerage.

XI. Cinque-Ports exempted from Prifage.

I. Prisage, is a certain taking or purveyance for Wine to the Kings use; The same is an ancient Duty which the Kings of England have time out of mind had and received; the manner hath been by taking of every Ship or Vessel that should come into this Realm, if ten Tun, to have for Prisage one Tun: and if it contain 20 Tun or more, to have two Tun (viz.) unum ante doleum, and the other deorsum, paying 20 s. for each Tun: And this ancient Immunity they have enjoyed as a Flower of the Crown, and by some has been conceived not grantable away without Act of Parliament. But yet in 6 E. 3. so. 3. Case 15. mentions the same to be grantable over.

Dyer 92. 42. 165. Fleta, lib. 2. cap. 21.

> II. King Edward the First having laid some Impositions on the Merchants, which in Anno 25. of his Reign being taken away with promise that neither he nor his Successors should do any such thing without Assent of Parliament: In 31 of his Reign they granted

granted him an encrease of Customes; in lieu of which Rott. Parls he granted them many Immunities, as Release of Pri-31 Ed. 1.

[age, &c. cap. 1.82.]

III. Prisage is not due till the unlading, or that which Trin. 5 Jac. in is commonly called breaking of Bulk; for the words B. R. Kennycot and Engless are, de qualibet navi important vini & disonerant inde. case.

King Edward the Third by his Charter dated 6 Martin Anno Regni primi, granted his Royal Charter of discharge to the Major, Commonalty and Citizens of London, in bac verba, (viz.) Quod de vinis Civium nulla prisa 44 Elizatist, sed perpetue inde essent quieti, &c. which was afterwards allowed in the Exchequer.

IV. It is not every Citizen that is capable of this Priviledge, but onely those that are Resiant within the City; And so it was Rul'd in the case of one Knowls, who being a Citizen and free Grocer of London, removed his Houshold cum pannis, and did dwell at Bristol, but yet kept his Shop in London; and a Ship of his arriving with Wines at London, and being unladen, the Prifage was demanded; he claymed the benefit of discharge. 4 Hen. 6. It was adjudged, he was not capable of the same: for Knowles case, he that will claym the benefit of this discharge, ought to be Civis incola Comorans.

24 H. 6. (A Private Act of Parliament,) Complaint was made, That the Lord Major of London would make Strangers Citizens; It was there declared, That this Hill. 43 Eliz.in benefit to be discharged from payment of Prisage, did torn' General not extend to such Citizens as were dotati, made free, versus Sacherebut unto those Citizens onely which are comorant inco-ril and Sneed. Lant, and resiant within the City.

V. If a Forraigner brings a Ship laden with Wines waller versus into the Port of London, and then makes a Citizen his Hanger, Bul-Executor and dyes, he shall not have the benefit of this strod. 3 part, Immunity from payment of Prisage for the Wines, for so. 1. that they are not bona Civium.

VI. If a Forreigner arrives with a Ship laden with

Wines at a Port with an intent to unlade, and before the Goods are entred or Bulk is broken, he fells them to a Citizen, Prifage shall be paid notwithstanding, for it was never the Kings grant to discharge a Citizen in fuch a manner.

VII. If the King does discharge such a Ship of 7. S. being at Sea, particularly naming the same, from the payment of Prifage, and he dyes before the Ship arrives, no duty can be demanded.

But it has been held, if a particular person has a grant Hanger's Case, to him to be discharged of his Goods, and he dyes be-

Hill 13 Jac. fore the arrival, the duty shall be paid,

A Quo Warranto was brought against three Archbishops of York, to shew cause why they demanded to have Prisage for Wines brought into the Port of Hull; The two first pleaded to have onely the first taste, and Archbishop of a pre-emption after Prifage paid: But the third pleaded a Charter of 15 E. 2. by force of which he claimed the fame; and Rul'd not good. For though the Charter might be good, yet it was held in that case, a disclaymer by the Predeceffor should bind the Successor: And at this day, the Duke of Ormond in Ireland hath an Inheritance in the Prisage of Wines by the Kings Charter.

Bro. tit. Difclaymer, 47. 6 E.3. fo. 5, 6. Yorks Cafe.

Sir John Davies in the case of Cuflomes.

VIII. Butlerage is a Custome due from Merchant-Strangers of 2 s. upon every Tun of Wine brought into this Realm by them.

King John granted to the Merchants of Aquitaine Trading for Wines thence into England divers Liberties, amongst others, Libertatibus concessis Mercatoribus vinetarijs de Ducatu Aquitania reddendo Regi & beredibus suis 2. s. de quolibet dolio vini ducti per eosdem infra Rega num Anglia vel potestate Regis.

In Libro Rubeo in Scaccario. Remem. fo.265.

Rott. Chartarum And TOI E. I. mu. 44. called Charta Mercatorio.

the Chap, of Cuftomes.

All Merchant-Strangers in confideration of the Grant to them by the King of divers Liberties and Freedomes, Concesserunt de quolibet dolio vini quod adducent vel adduci ter at large in facerent infra Regnum &c. salvent nobis & beredibus nostris nomine Custuma duos solidos Oc.

It

It is called Butlerage, because the Kings chief Butler doth receive it. And the double value of these Duties is made penal if any person customes Goods in an other mans name whereby to destraud the King of Prisage 2 Ed. 6. 22 and Butlerage.

IX. Breaking of Bulks is that which entitles the King to the Duty: for if a Merchant Imports Wines to the number of 20 Tuns, yet if he unlades but part, as 9. or 4. Tun, yet the King shall have the entire Prisage; and though the Custome seems to declare, that the taking must be as well before as after the Mass, yet is not the Officer tyed to that strictness, but may take where he Kenicott virpleases; for two Tuns are the Kings due: for other-sis Hoggans, wish he might be cozened, the Freighter perhaps lading Televitors Case, other Commodities aboard after the Mass.

3. Rep. 44. 10.

If there be but one Tun taken out, yet the Duty must be paid: The reason is, for that otherwise the Officer should be obliged to travail perhaps all over the King-

dome.

X. The King granted to a Venetian Merchant that he should be quit, did omnibus customis Subsidijs & impositionibus & omnibus alijs denariorum summis debitis & solubilibus pro quibuscunq, Merchandizis importandis; and that he should be as free as the Citizens of London: In Vouched in that case it was adjudged in the Exchequer, That by that she case of Customat the King did not discharge him of Prisage, besome in Sir cause the Prisage was not specially expressed in the Reports. Grant, although that the City of London were by a special Charter freed of Prisage.

XI. The Cinque-Ports are likewise discharged of Cl. 1 E. I. m. 5. Prisage.

CHAP.

CHAP. IX.

Of Pylots, Wharfage, Pzimage, Averidge, Loadmanage.

I. Of the Pylots charge till the Ship is brought to her place or bed.

II. If the Ship is likely to miscarry, what the Ships Crew may do at such time.

III. Of Ignorant Pylots their punishment, and if the Ship miscarries, who shall Answer.

IV. Of Wharfage, and where the wharfinger shall answer, and where not. V. Primage and Petilodmanage where due, and for what; and if the Ropes break, where the Master, and where the Wharsinger shall answer.

VI. Petty Averidge where due, and for what, and Hatt money.

VII. Loadmanage where due, and for what.

BY the Lawes of Oleron after that the Pylot hath brought the Ship to sure Harbour, he is no surther bound or lyable; for then the Master is to see her bed and to her lying, and bear all the rest of her Burthen, charge and danger, except that of the act of God; So that before she becomes to her place or bed, and while she is under the Pylot's charge, if she or her Goods perish, or be spoyled, the Pylot must make good the same.

Leg. Oleron, Cap. 23.

city of Cu-

II. By the Lawes of Oleron, if his fault is apparantly groß that the Ships Crew fees an apparent Wreck, they may then lead him to the Hatches and strike off his head; But the Lawes of England allow no such hasty execution.

By the Lawes of Denmark an ignorant Pylot is to pals

thrice under the Ships Keel.

The Master generally in the Charterparty covenants to find a Pylot, and the Merchant covenants to pay him his Pylotage.

III. But

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III. But if a Ship should miscarry coming up the River under the Charge of the Pylot, it has been a Question, Whether the Master should answer in case of the insufficiency of the Pylot; or whether the Merchant may have his remedy against both? It hath been conceived the Merchant hath his Election to charge either; and if the Master, then he must lick himself whole of the Pylot.

IV. Wharfage is money paid for landing Wares at 27 H 8. cap a Wharf, or for Shipping or taking in Goods into a 26. Boat or Birge, they commonly keep Boats or Lighters cap. 11. of their own for the carrying out and bringing in of Goods, in which if a loss or detriment happens, they

may in some cases be made lyable.

An Action of the Case grounded on the Custome of the Realm was brought against the Defendant, Master of a Wharf, for not safe delivering of Goods, &c. The Case appeared to be thus; The Master unladed a Bale of Silk into the Wharfingers Lighter, and sent Randall verpart of his Marriners to convey it a shoare; it happened sus Histor that the Goods were stole: The Question was, When Pasch 26. Cast ther the Wharfinger or the Master should answer? Up in B. R. on a Tryal at Guild-Hall before my Lord Chief Justice Hale, it was there Rul'd, That the Master was lyable, and not the Wharfinger; for till they are landed, the Master hath them under his power: but if goods are to be sent aboard, there if they miscarry in their passage, the Wharfinger must answer.

V. Primage and Petilodmanage is likewife due to the Master and Marriners for the use of his Cables and Ropes to discharge the Goods; and to the Marriners for loading and unloading of the Ship or Vessel, it is 32 H. S. cap. commonly about twelve pence per Tup.

If the Ropes break in hoysting of Goods out of the Lig. Oleron, Ship into the Lighter or Boat, the master must answer cap, 100

if the Goods be damnified or loft.

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t

But if the Roapes break that the Crane in taking them out of the Lighter, (although till they are landed, they

256 Co. Entry. fo. 2.

that the Ave-

tioned in the

Bills, is that

which is the Averidge or

Contribution

for loffes.

ridge men-

Of petty Averloge & Loadsmanage. Book 2. are not out of the Masters custody.) yet the Wharfinger shall answer.

VI. Petty Averidge is another little small Duty which Merchants pay to the Master when they onely take Tunnage, over and above the Freight, the which Some conceive is a small recompence or gratuity for the Masters care over the Lading; and in the Bills of Lading they are exprest after Freight, together with Primage and Averidge accustomed.

> The French Ships commonly term the Gratuity Hatt-Money, and our English Merchants pay it our Masters over the Freight, it is sometimes more, sometimes

less; two or three Pieces.

Roughton, Artic. Enquiry. 27, 28.

VII. Loadsman, is he that undertakes to bring a Ship fase through the Haven to the Key or place of discharge, and if thorough his ignorance, negligence or other fault he suffereth the Ship or Merchandize to perish, an Action lyes against him at the Common Law; and by some conceived he may be punished in the Admiralty, but not in both.

The Hire is called Loadmanage, the which the Pylate receives of the Master for conducting the Ship up the River, or into the Port to her convenient

Bed.

If two Ships lye in a Harbour, and the Anchor of one is feared may occasion to damnise the other, if after request and refusal (and there be probable cause, the other may take up the same, and let the same down at a further distance, and the same is opposed or hindred, if any damage happens they are to make full fatisfaction; fo it is if they lay out an Anchor and neglect the Per Leg. Oleren placing of a Buoy to the Anchor, and damage happen thereby, they are not onely subject to be punished in the Admiralty, but likewise to render satisfaction to the party damnified.

If two Ships be in the River, and the one falls foul on the other both being laden, by the Law Maritime the Contribution is to be in Common, and to be equal-

Cap. 15.

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ly divided and apprized half by half; but then the Marriners must swear there was no fault in them: for otherwise one that hath an old rotten Vessel which he can
no wayes dispose of, may so order the matter as to lay
her in the way of a good Ship under sayl, so that the
same may be answered in damage: but when the Contribution is made equal, then the contrivance will be
avoided.

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CHAP. X.

Of Bills of Erchange.

I. Of the Antiquity of Exchange by the Hebrew Law.

II. Of the Antiquity of Exchange by the Romans.

III. Of Exchanges by other Nations in imitation of those people.

IV. Of the several sorts of Exchanges, and of Cambio commune.

V. Of Cambio real, or Exchanges value for value.

VI. Of Cambio ficco, or dry Exchanges.

VII. Of Cambio fictio, or feigned Exchange. VIII. Of the Exchanges used this

day, and on what. IX. How Exchanges are made, and

upon Moneys in London. X. Moneys paid generally, how re-

paid by Exchange.

XI. Of Bills of Exchange payable at fingle ulance.

XII. Eiks of Exchange at double or treble usance, and of the customary usances to certain places from London and Amsterdam to other place.

XIII. Of the nature of Bills of Exchange, and how efteemed of by the Lawes of England.

XIV. Bills drawn more then one, no prejudice to the parties; and of the true measure of judging on Bills by Custome.

XV. What amounts to an acceptance generally, and on refusal where to be protested.

XVI. All the drawers are made XXVIII. A Bill once accepted,

lyable; and whether the party to whom the Money is made payable is bound to procure an acceptance.

XVII. Protoft, what is meant by the same; and where the same is necessary, and where not.

XVIII. Bill drawn on two persons, where the same is necessary, and where not.

XIX. One Factor serves a Company, where a Bill accepted of his by one of the Company obliges the rest, and where not.

XX. What words amount to an acceptance, and what not.

XXI. Where a Bill may be accepted for part, and what must be done with the Bill thereupon.

XXII. When a Countermand may legally be made, and when not.

XXIII. How the several parties interessed in a Bill of Exchange are obliged and settered to each other.

XXIV. How a Collateral security may be annexed to a Bill when the time is elapsed for non-payment.

XXV. where the Protest is onely necessary to be kept, and where that and the Bill must both be remitted.

XXVI. Bill lost, what is neteffary for the parties interessed in such case to alt.

XXVII. Of blanck Endorsements, the validity of the same.

VIII. A Bill once accepted,

whether the fame may be revoked; and whether it may be accepted to be paid at a longer time then is mentioned : and what XXXIV. The Acceptor ready to Protefts are then necessary to be made.

XXIX. Of Bills accepted for the

fame (ball oblige.

XXX. The time customary allowed; for payment after failer of pay-

ment at the day. XXXI. Of the validity of the foecover the money to be paid on the

drawer.

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d, ber XXXII. Bill accepted, and before the day of payment the Acceptor be done as in reference to obtaining better fecurity.

XXXIII. Bills accepted for the bonour of the Drawer , where

Masters of the Exchange.

turned into an act and remitted by him that gives bonour to the Bill.

pay, but the party to whom made payable is dead, what is necef-

bonour of the Drawer, where the XXXV. Caufes general for a Proteft, and where satisfaction to the deliverer discharges all par-

XXXVI. Of Exchange by way of

Credit.

dy protest as in relation to re- XXXVII. One payes a Bill before it be due, and the party to wham the fame was paid fails, where be (hall be answerable to the Drawer not withstanding. is a fayling, what's necessary to XXXVIII. Of Bills assignable

over according to the Customes of Merchants, what operation in

England.

I.THe Exchange for Moneys is of great Antiquity as well by observation of the Hebrew Customes, as those of the Romans.

Upon the first of the month Adar, Proclamation was made thoroughout all Ifrael, That the People should provide their half Sheckles, which were yearly paid towards the Service of the Temple according to the Commandment of God; on the 25th of Adar then Exad. 30. 31. they brought Tables into the Temple, that is, into the outward Court where the people flood) on these Tables lay the leffer Coyns which were to furnish those who wanted half Sheckles for their Offerings, or that wanted leffer pieces of Money in their payment, for Moles Kotlenies Oxen, Sheep, Doves and the like which stood there in a Printed at Vereadiness in the same Court to be fold for Sacrifices; but nice 1557. de this supply and furnishing the people from those Tables Siclis, fo. 122. was not without an Exchange for other money, or things col. 2. in lieu of money, and that upon advantage; Hence all those that sate at the Tables were called Bankers, or

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Alex. Gendier.

II. By the Romans it is supposed to be in use upwards of 2000 years, Moneys being then elected out of the best of Metals to avoid the tedious carriage of Merchandize, from one Countrey to another; So other Nations imitating the Jews and Romans, erected Mints, and coyned Moneys, upon which the Exchange by Bills was devised, not onely to avoid the danger and adventure, but also its troublesome and tedious carriage.

III. Thus Kingdoms and Countreys having by their foveraign authorities coyned Moneys, caused them to appoint a certain Exchange, for permutation of the various Coyns of several Countreys, without any transportation of the Coyn, but giving par pro pari, or value for value, with a certain allowance to be made those Ex-

changers for accommodating the Merchants.

IV. As Commerce became various, so Exchange numerous; but generally reduced to four, Cambio Commune, Cambio real, Cambio sicco, and Cambio sicitio.

RE. Orig. 194. Statut. 5 R.2. cap. 2. 3 H. 7. 6. Cambio Commune in England was those that were Constituted by the several Kings, where having received Moneys in England, would remit by Exchange the like sum to be paid in another Kingdome. Edward the Third, to ascertain the Exchange, caused Tables to be set up in most of the general Marts or Ports of England, declaring the values of all or most of the Forraign Coyns of those Countreys where his Subjects held correspondence or Commerce, and what allowances were to be made for having Moneys to be remitted to such Countryes or Kingdoms.

18 E. 3: Acton Burnel. V. Cambio real, was when Moneys were paid to the Exchanger, and Bills were drawn, without naming the Species, but according to the value of the several Coyns, which two Offices afterwards were incorporated, and indeed was no more but upon payment of Moneys here in England to be repaid the just value in Money in another Countrey, according to the price agreed upon between the Officer and deliverer to allow or pay for the exchange of the money and the loss of time.

Book 2.

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VI. Cambio ficco, or dry Exchange, is when a Merchant hath occasion for 500 l. for a certain time, and would willingly pay interest for the same; the Banker being desirous to take more than the Statute gives, and yet would avoid the fame, offers the 500 l. by Exchange This Ufury for Cales, whereunto the Merchant agrees; but the Mer- was first introchant having no correspondence there, the Banker de-duced by the fires him to draw his Bill, to be paid at double or treble firms here in usance, at Cales, by Robin-Hood, or John-a-Noakes (any Vide Co. 2. feign'd person) at the price the Exchange is then cur- toff. fo. 506. rant; accordingly the Merchant makes the Bill, and then the Banker payes the moneys; which Bill the Banker. remits to some Friend of his to get a Protest from Cales for non-payment, with their Exchange of the money from Cales to London, all which with costs, the Merchant is to repay to the Banker; sometimes they are so conscientious as not to make above 30 per Cent.

VII. Cambio fictitio, when a Merchant hath occasion for Goods to Freight out the Ship, but cannot well spare money; The Owner of the Goods tells him he must have ready money; the buyer knowing his drift, it is agreed, that the feller shall take up the moneys, by Exchange, for Venice, or any other parts ; but then the Merchant must pay for Exchange and re-exchange.

So likewise where the Merchant is become indebted to the Banker, they are contented to flay, the Merchant paying Exchange and re-exchange; the which he

will most certainly compell him to do.

These two last wayes of grinding the face of the 3 & 4 H. 7 generous Merchant, was afterwards prohibited, but, notwithstanding, it was found impossible to moderate the inequality of Exchanges, and to have value for value; fo that at this day it feems to be a Cold, that many an honest man is apt to catch.

VIII. The just and true Exchange for Moneys that is at this day used in England (by Bills) is par pro pari, according to value for value; fo as the English Exchange, being grounded on the weight and finenels of our own Moneys, and the weight and finenels of the Moneys of Ec 4

each other Countrey, according to their several Standards proportionable in their valuation, which being truly and justly made, ascertains and reduces the price of Exchange to a sum certain for the Exchange of Moneys to any Nation or Country whatsoever: As for instance,

If one receives 100 l. in London to pay 100 l. in Exe-

ter; this by the Par.

But if a Merchant receives 1001. in London to pay 100 l. at Paris, there the party is to examine and compare the English weight with the weight of France, the tinenes of the English Sterling Standard with the finenels of the French Standard ; if that at Paris and that at London differ not in proportion; then the Exchange may run at one price, taking the denomination according to the valuation of the Moneys of each Countrey; but if they differ, the price accordingly rifes or falls : and the fame is eafily known, by knowing and examining the real finenels of a French's's, piece, and an English 5 s. piece, and the difference which is to be allowed for the want of finenels or weight, which is the Exchange, and fo proportionably for any Sums or Moneys of any other Country; the which is called Par, or giving value for value.

And therefore some are seed, and now Moneys are made a meer Merchandize, of opinion, and does over-rule Commodities, and Moneys rise and that there can fall in price according to the plenty and scarcity of Morateset on the ney-

Par in Ex-

change, to answer justly the value of the Coyns of Forraign parts, by reason of the diversity of them, and of their turning values. Vide Sir Robor Cotton Posthuma, fo. 304, and are ward of hide apparent at the value part and

TX. As Money is the common measure of things between man and man within the Realm, so is Exchange between Merchant and Merchant within and without the Realm; The which is properly made by Bills when Money is delivered simply here in England, and Bills received for the repayment of the same in some other Country either within the Realm or without the Realm, at a price certain, and agreed upon between the Merchant and the Deliverer.

Ulance from

For there is not at this day any peculiar or proper Money to be found in Specie whereupon Outland Exchanges can be grounded; therefore all Forraign Coyns are called imaginary.

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At London all Exchanges are made upon the pound Cro 2 fo. 2. flerling of 20 s. and 12 d. to the shilling, for Germany, Martin vertes Low-Countries, and other places of Traffique; and for Bour. Pafel. France upon the French Crown: for Italy, Spain, and I fac. in B.R. fome other places, upon the Ducate: For Florence, Venice, and other places in the Streights, commonly by the Dollar, and Florin.

X. Bills drawn to be paid, are either at fight, or a time certain; fingle, double or treble usance, and are

commonly about 3 for fear of miscarriage.

The taking and delivering money at fight binds the taker up to give his Bill to pay at fight, or within some thort time the like fum after fuch a rate the Pound. Dollar , Ducate or Crown, as is agreed between them in Forraign Coyn, either according to the valuation of Moneys, or current Moneys for Merchandize,

XI. The second time of payment is called Usance. it is known or taken to be the compass of one month, to be computed from the date of the Bill, and that governed according to the custome of the place where those Exchanges do run.

XII. The third is double or treble Unfance dor 2 months; sometimes there are Exchanges made upon half Ufance . Same

The times of payment do alter the price of Exchanges according to time, commonly after 12, 15, or 30 in the Hundred by the year.

Though the Ad wis no man but to keep to

He of Commerce. (without which it is impossi-

a cence helt obtained for the Bine.

any Mation to fourishs) yet count hot any pet for draw sonifit lle et petre bisoney berend Sels without it.

Usance from London to	Middleborough Amferdam Antwerpe Bridges Rotterdam Lifle Roane Paris	are generally accounted one months time from the date of the Bill.	Inching, of 20 F
Ulance from Amfterdam to	Rome Genoa Venice Naples Palermo Luca Sevill Lisbon	Are generally accounted 2 months from the dates &cc.	fhorter time, there is no di- rect certain- ty, but one- ly that fingle usance is a month, dou-
From London to	Florence Venice Leigborne Zant Aleppo	is fometime accounted treble Ufance from the date of the Bill.	Notys, or constant the last to be computed to be co

XIII. Exembium vel Cambium, or as the TCivilians term, permutatio; Billa Exeambij fignification more but a customary Bill, solempnized by a numerous consent of Traders, to have a respect more then other Bills, though of as high and as intrinsical a value: And those that give such Bills were called Exchangers, or Bankers.

Though the Act was no more but to keep up the life of Commerce, (without which it is impossible for any Nation to flourish;) yet could not any person draw such Bills, or return Money beyond Seas, without Listatut. 5 R. 2 cence first obtained of the King.

Cap. 2. But

But at this day any man may do it without being obliged to obtain such leave.

XIV. Such a Bill being drawn, they commonly take one or two more of the same date word for word. onely this Clause is inserted in the second, My first of the same date persons and sum not being paid : And in the third, My first and second of the same date, and con-

tents not being paid.

The right measure of judging on Bills of Exchange, consuctudo is purely by the laudable Custome often reiterated over quandocung; pro and over, by which means the fame hath obtained the faith Bratton, force of a Law, and not the bare and fingle opinion of in partibus abi fome half-fledg'd Merchants: For Bills of Exchange fuerit more are things of great moment as to Commerce, and are utentium appro-neither to be strained so high, as that a man should not enim temporia cast his eye on them but the same shall be taken to be wins & confuean acceptance: nor on the other hand having duly ac-tudinis non of cepted them, the same should be rashly and unadvisedly vilis authori-avoided, by the shallow sancy of such nimble pated san, lib. 1. shufflers; but they are soberly judged and governed, as the fame hath generally been approved of and adjudged of in former Ages.

de considera.

X V. A Bill being remitted, the party is to go immediately to the person to whom the same is directed. and present the same in order to his acceptance; if it be tendred, and the party subscribes Accepted; or; Accepted by me A. B. ; or being in the Exchange fayes, I accept the Bill, and will pay it according to the Contents: this amounts without all controvertie to an Acceptance.

But if the same be refused, the party must then pro- Words are cure a Protest, and remit the same to the Deliverer, who made to figis to refort to the Drawer for fatisfaction for the print By the word, cipal costs and damage.

payes the Moneys beyond Sea. By the word, Drawer, he that writes or drawes the Bill of Exchange; the person upon whom, is called the Acceptor.

XVI. If there be several Drawers who subscribe, all

are lyable in case of a Protest.

Nor is any fuch thing as a 3 dayes respite to be allowed for acceptance.

If a Bill is drawn upon a Merchant in London payable to J. S. at double Usance, J. S. is not bound in strictness of Law to procure an acceptance, but onely tender the Bill when the Money is due: but Merchants which generally have generous spirits will not surprize a man, but will first procure an acceptance, or at least leave the Bill for the party to consider and give his answer, and then give advice of the same, and if the money be not paid, then protest.

XVII. A protest is no more but to subject the drawer to answer in case of non-acceptance or non-payment; nor does the same discharge the party Acceptor, if once accepted; for the Deliverer hath now two remedies, one against the Drawer, and the other against the Acceptor.

To entitle the party to an Action at Law in England against the Acceptor, it matters not whether there be a Protest; but to entitle the party to a recovery against the Drawer beyond the Seas or elsewhere, there must

be a Protest before a Publique Notary.

Per Jasonem in lege allegantur ff. de conditionibus indebiti.

mide to fig-

os 186. 2.

XVIII. A Bill drawn on two joyntly must have a joynt acceptance, otherwise it must be protested, but to

two or either of them, è contra.

the tenour of the Bill, and ought not to be protested, but in case of non-payment; and in that case the person acceptor is lyable to an Action: but if it be on joynt Traders, an acceptance by one will conclude and hind and the other.

chow said Company drawes a Bill on the same, and a member actable of anomic cepts the same, this perhaps may make him lyable, but a most another member.

So it is if to Merchants shall imploy a Factor at the Canaries, and the Factor drawes a Bill on them all, and

one

one of them accepts the Bill, and then refuses payment;

this will not oblige the reft.

But if there be 3 Joynt Traders for the common Mich. 19 Isc. flock and benefit of all there, and their Factor drawes a C. B. Vanbeath Bill on them; the acceptance of the one will oblige the Winch. 24,24 relidue of the Company.

X X. A small matter amounts to an acceptance, so that there be right understanding between both parties; As, Leave your Bill with me and I will accept it : Or, Call for it to morrow, and it shall be accepted; that does oblige as effectual by the Custome of Merchants, and according to Law, as if the party had actually subscribed or signed it, (which is usually done.)

But if a man shall fay, Leave your Bill with me, I will look over my accounts and Books between the drawer and I, and call to morrow, and accordingly the Bill shall be accepted; this shall not amount to a compleat acceptance: for this mention of his Book and Accounts, was really intended to fee if there were effects in his hands to answer, without which perhaps he would not accept of the fame. And fo it was Rul'd by L. Chief Justice Trin. 20 Car. Hale at Guild-Hall.

2 in B. R.

A Bill may be accepted for part, for that the party The receiving upon whom the same was drawn had no more effects of part of the in his hands; which being usually done, there must be Moneys upon a protest, if not for the whole sum, yet at least for the bill, does no wayes wearefidue : however, after payment of fuch part there ken the Bill. must be a protest for the remainder.

X X I I. Any time before the money becomes due, Per les publia the Drawer may countermand the payment, although in f. ff. depositi the Bill hath been accepted. ibidem, & per

The Countermand is usually made before a Notary & Romanum finbut if it comes without, so it comes under the parties enlari, 474.

hand, it is well enough.

If the Bill be accepted, and the party defires to have the money before it be due, and it is paid, and then

Of Bills of Ecchange. Book 2 there comes a countermand; it hath been conceived, that he ought not to be allowed, for as he could not enlarge the time, fo he could not shorten it, but his

duty is to follow his Order.

XXIII. Note, The Drawer is bound to the Deli-Words are verer, and the Acceptor to the party to whom the Bill made to fignific things; is made payable; yet both are not bound to one man. Therefore by the word, De unless the Deliverer be a Servant to the party to whom the money is made payable, or the party to whom the Liverer , is meant he that money is made payable be Servant to the Deliverer: payes the Mo-yet both Taker and Accepter are lyable till the Bill is ney: he that paid. drawes the Bill is called

the Taker or Drawer; And the party upon whom, is called the Acceptor.

XXIV. Therefore when you bring your Action, be fure to draw your Declaration accordingly, and make the same part of the Custome as you set it forth; for if you vary, you must expect to be nonfuited s and the 1654 in B.R. party is not bound to alledge a particular place of demand.

If a Bill be returned protested for want of payment, the Drawer is to repay the money and damage, or else he may procure a fecurity, which is no more but another person of value subscribes the Bill, in these or the like words, I here underwritten do bind my self as Principal, according to the Custome of Merchants, for the summe mentioned in the Bill of Exchange whereupon this Protest is made, Dated, Oc.

Now the Drawer by vertue of this supplymental agreement hath as much time again to pay the Moneys as there was given him in the Bill when it was first drawn; fo that if the money is not then paid, together with the Rechange and Charges of the party, the party may recover the same on the Principal or Security.

* That is for not payment, the Bill being once accept-

Styles, Pasch.

to. 370.

XXV. Beyond the Seas the protest * under the Notary's hand is sufficient to shew in Court without producing the very Bill it felf. But if a Bill in England be accepted, accepted, and a special Action grounded on the Custome be brought against the Acceptor, at the Trval the party Plaintlff must produce the Bill accepted, and not the Protest; otherwise he will fail in his Action at that time.

Therefore it is fafe that a Bill once accepted be kept. and onely a Protest for non-payment be remitted; but a Bill protested for not acceptance must be remitted.

XXVI. If a Bill is left with a Merchant to accept. and he loses the Bill (or at least it is so mis-lade that it cannot be found;) if the party shall request the Merchant to give him a Note for the payment according to the time limited in the Bill of Exchange. Otherwise there must be two Protests, one for not acceptance, the other for non-payment; but if a Note is given for payment, if there happens to be a failer, yet in that case there must be Protest for non-payment.

XXVII. A Bill is remitted to 7. S. who owes moneys to 7. D: 7. S. delivers the Bill to 7. D, and on the back-fide subscribes his name; if 7. D. receives the moneys, he may fill up the blank as if the moneys had been actually paid to 7. S: This is practifed amongst Merchants, and by them reputed firm and good. certainly the Common Law looks upon this filling up of Blanks after a man hath once figned or fealed, to be no better then a harmless forgery.

Note. No person, be it Wife or Servant, can accept of a Bill of Exchange to bind the Master without a lawful authority, as a Letter of Attorney, and the like, which must be under-hand, unless that it has been formerly and usually done by the Wife or Servant in fuch case, when the Master hath been out of Town; who hath approved of the same and answered payment: it must be usually done; but one partner may for an- Styles Reports, other.

in B. R. 370.

A Servant of Sir Robert Clayton and Mr. Alderman Morris, (but at that time actually gone from them) took

Monck verfus Clayton Mil'. and Merris. 2. in B. R.

up 200 Guineys of Mr. Moneh a Goldsmith ; without any authority of his Masters; (but Monck did not know that he was gone) the Moneys not being paid, Monek brought an Action against Sir Robert Clayton and Mer-Mich. 22 Car; ris, and at Guild-Hall it was Rul'd per Keeling Chief Justice, That they should answer; and there was a Verdict for the Plaintiff : And though there was great endeayours to obtain a new Tryal, yet it was denyed, the Court at Westminster being fully satisfied that they ought to answer: for this Servant had used often to receive and pay Moneys for them; and thereupon they actually paid the Moneys.

And though the fame feems an act of Wildome for Merchants and others fo. to take, yet it

Note, That which will oblige the Master, will be the authority and liberty which he usually gives the Servant; therefore such a power devolved, ought to be secured by the prudent'st way that may be; which is generally done by Bonds and Obligations.

oftentimes

reis Reports,

proves the destruction of many a Family: Th. Father puts out the Son perhaps with no less then 2 or 300 1; and is himself become bound for his Truth and just Accounting, &c. The Servant is immediately trufted with his Cash, and then he too young experienc'd in the World, either neglects keeping a just account, or keeping that, subjects his Masters Cash to be spent by himself and those who make it their fole Trade to betray such Youths: The Master finding the consumption, calls his Servant to account, who conscious of the act, forsakes his Service, dares not see his Relations, and then as a general consequence falls into a Company, the which nothing but Providence can preserve from taking their wicked courfes. The Father is called to answer, (what ever the Master does say the Servant hath spent or imbezled) none being able to contradict him, he must with a heart full of grief submit to and pay, besides the loss of the Moneys dvanced upon the Servant's first putting forth: Which sometimes proves a great affliction in a Family. On the other fide, if Servants were not to be entrufted, the Myflery could not be learnt, nor the business dispatched; and therefore faith must be given : but then it were Justice, and Honesty that as a Father puts perhaps the Child of his love to one in whom he reposes a faith and trust, that the Master should be then as a Parent, so they should prevent all occasions that might subject them to Temptations, and not be over-hally in Truffing them with the Callr: which is the very Bait our London Gamester's carch such Gudgeons,

> If a Bill of Exchange by contrary Wind or other occasions be fo long on the way that the Usance or time limited by the Bill be expired, and being tendred, both acceptance and refufal are denyed; protests for both muft

must be made, and the Drawer must answer the value die of their accepts a ballot facilitation of the agents of the ballot bind the others and an Attion of the late o

XXVIII. A Bill once accepted cannot be revoked Rasial 339 by the party that accepted it, though immediately after

s. for non-

Junivag

and before the Bill becomes due, he hath advice the Bald in rubra Drawer is broke

pecunia in ult If a Bill is not accepted to be paid at the exact time, col. & Lig. it must be protested; but it accepted for a longer time, quidemff, tothe party to whom the Bill is made payable must protest the fame for want of acceptance according to the tenour: vet he may take the acceptance offered not with franding. Nor can the party if he once subscribes the Bill for a longer time, revoke the fame, or blot out his name, al-though it is not according to the tenour of the Bill; for by his acceptance he hath made himfelf debtor, and owns the draught made by his Friend upon him, whole right another man cannot give away, and therefore cannot refuse or discharge the acceptance.

Note. This case will admit of two Protests, perhaps

One Protest must be made for not accepting ac-Bald in Lig. cording to the time. pro debito.

2. For that the money being demanded according to c. de bon. actor. the time mentioned in the Bill, was not paid. Judi-posiden. 3. If the Money is not paid according to that time or per Bartol.

in Lag. fingulathat the Acceptor subscribed or accepted. ria. Col. 7. ff. probatur.

A. drawes a Bill on B. and B. is in the Country; C. a Friend of his hearing of the Bill accepts it : the party to whom the money is to be paid must make a protest for non-acceptance by B. and then he may take the acceptance of C. and it shall bind C. to answer the Monev.

If a Bill is drawn on B. and B. happens to be in the pinchard ver-Country, and a Friend of his desires the party not to fus Fowly protest, and he will pay the same; it is good, and shall styles, 416.

bind fuch party.

If there be two joynt-Merchants or Partners, and

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Pasch. 1654. in one of them accepts a Bill of Exchange, the same shall B. R. Styles bind the other; and an Action of the Case on the Cu-370. steme may be maintained against him.

London. XXX. Merchants generally allow 3. dayes after a Bill becomes due for the payment; and for non-payment within the 3 dayes protest is made, but is not fent away till the next Polt after the time of payment is expired.

Holland.

If Saturday is the third day, no protest is made till Monday.

There are two Protests, 1. For nonacceptance, which is cal-2. for nonpayment.

XXXI. The use of the Protest is this, That it signifies to the Drawer that the party upon whom he drew his Bill was unwilling, not to be found or infolvent, and to let him have a timely notice of the same, and to enled intimation. able the party to recover against the Drawer.

For if one drawes a Bill from France upon a person in England, who accepts and fails, or becomes infolvent at the time of payment, if there be not a Protest and * timely notice fent to the Dawer there, it will be

look'd upon difficult to recover the Money.

* Which is to be the third day.

In Holland they are not altogether so strict, yet there must be a reasonable time of notice; the reason is, for perhaps if he had reasonable and timely notice, the Drawer then might have had Effects or other means of his upon whom he drew, to reimburse himself the Bill; which fince for want of timely notice he hath remitted And the general Rule is, That though the Drawer is bound to the Deliverer till the Bill is fatisfied, yet it is with this proviso, that protest be made in

There is no danger, be the due time, and a lawful and an ingenious diligence used party never to for the obtaining payment of the Moneys; for it were responsible, to unreasonable the Drawer should suffer through his diately ifthe neglect.

money be not

paid when it is due, i. e. the third day; but there may (especially beyond Seas) be great hazard for want of protesting.

> XXXII. Where a Merchant hath accepted, and before the same became due, he becomes insolvent, or at least his

his credit publiquely blafted, a Protest ought to go; but In le pro dithen there is usually a demand made, which once come- bito in fine C. ing, the Drawer is compellable to give better fecurity; de bonis author. and if a second Bill comes if no protest, then Drawer and Security lye at stake.

XXXIII. If a Merchant drawes a Bill, and there is a Protest for non-payment; if another person hearing of the same declare, that he for the honour of the Drawer will pay the contents, and thereupon subscribes; he is obliged thereby ; and in this case it has been practifed, that the party that received the money hath put his name on the back-fide of the Bill in Blanck; but the receipt is sometimes taken on the protest, which together with the whole proceeding is turned into an act; and the same being drawn by the Notary, is remitted to the Drawer by him who gave honour to the Bill.

XXXIV. If a Bill be accepted, and the party dyes, yet there mutt be a demand made of his Executors or Administration; and in default or delay of payment, a Protest must be made: and although it may fall out, 14 dayes althat the Moneys may become due before there can be lowed from the death be-Administrators; or the Probate of the Will be granted ; fore Adminivet that is delay sufficient for a Protest in case of non-stration can be

payment.

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But on the other hand, if the party be dead to whom unless there the Moneys are made payable, and the Moneys are be a Will. ready to be paid, and there is no person that can legally give a discharge; yet a Protest ought not to go for not payment: The reason is, because there is no person that hath any Authority either in deed or in Law to make it, But an intimaand a Notary ought not to make it, if he does, and the tion ought to party hath received any prejudice thereby, an Action of the Acceptor the Case perhaps may lye against him for his pains: nor is willing to does it avail; that if security be offered to save him pay according harmless against the Executors or Administrators, for to Order. that is an act left to his own discretion; for perhaps the fecurity may not be lik'd: but whether good or bad, makes nothing as to oblige him in Law.

But if a man is bound in a Bond to pay a fum of Ff 3 money

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money to 7. S. his Executors, Administrators, &c. and the Obligee dyes intestate the day before the fum becomes due, yet the Bond is not forfeited if not paid at the day, because there was no body to whom the Obligor could pay to fave his Obligation: But as Littleton fayes, if it be to pay to J.S. generally, you must hunt him out all over the Kingdom, if you lave the penalty.

XXXV. A man not found, or being found not met withal either at home or the Exchange, is cause sufficient for a protest; but in that there must be diligence

used in the finding him.

A Bill returned protested for non-payment being once fatisfied by the drawer to the deliverer, the drawer is discharged and so is the Acceptor to him to whom the Moneys were to be paid: but, the Acceptor by vertue of his acceptance makes himself a debtor, fecundum consuetudinem Mercatoriam to the drawer.

XXXVI. Moneys may be had on Exchange by way of Letters of Credit, the which are in two respects,

the first general, the other especial.

The general Letter is open, directed, To all Merchanis the death beand others that (hall furnish my Servant or Factor, or any other with such and such Moneys; for repayment of which he binds himself to answer and pay all such Bills of Ex change as shall be drawn on him upon the receipt of the value, by his Servant, Factor or other person: If there be really Moneys advanced on this Letter of Credit and paid to the Factor, Servant or other, and Bills of Exchange are fent to the party that fent fuch Letter of Credit, and if he refules to accept, yet according to the customes of Merchants he is bound to pay; the reason is, for there was no respect had to the ability of the taker up, but to him that gave his Letters of Credit : and therefore in such case if an Action at Law be brought, the particular custome as to that point must be carefully fet forth.

The special Letters of Credit, where one writes a Letter to furnish another mans Factor or Agent; and there is in this the same remedy as above.

As Bills of Exchang seldome come without Letters of Advice, so ought they to be pursued: If a Bill shall express, And put it to the account of A; and the Letter of Advice sayes B; this must be protested against, for it cannot safely be paid; at least running the Risque of an equitable Suit.

XXXVII. If one payes money on a Bill before it be due and the party breaks, it has been conceived that the party ought to answer the drawer: The reason hath been, because the drawer might have countermanded the same, or ordered the Bill to be made payable to another.

In Italy if Money is paid to a Banker's Servant, and if the Master subscribe, Pagate com si dice, this binds the Master as effectually as if he had subscribed it with his own hands.

XXXVIII. A Bill drawn by a Merchant in London payable by another person beyond Seas, such Bills in most Countreys are assignable over from Merchant to Merchant, and the last person may sue and recover the same upon an acceptance: But in England onely the suffer person mentioned in the Bill, and to whom the Money is made payable may recover. 'Tis true, such person to whom the Money is made payable, may for valuable consideration deliver this Bill to another person, and he may endorse an Order on the back-side; and if the party afterwards resules payment of the same, it may be sued in the parties name to whom the same was transferred, laying the same by way of Custome.

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CHAP.

HAP. XI

Of Poneys advanced by way of Bottomerie or Fænus Bauticum.

I. How Commerce is made equi- X. Of Moneys fent on Shipboard valent to Natural Communi-

II. Whether Money be fit onely to Vice

III. whether Abraham chose to acquire a Property by Money.

mental measure of the value of things.

V. How Money is equal to all things.

VI. Money is for buying, and hinders not but helps Permuta-

VII. Money the Instrument of Charity and Sacrifices, as well as our Necessities.

VIII. Of the differences between Moneys advanced to be used in which is advanced at Sea.

IX. Of Money advanced by way of Bottomerie when the Contract bath its inception.

and the Veffel is wrecht, where the Lender hall bear hare of the loss, and where not.

maintain the Trade and Credit of X I. Of Moneys taken up by the Master, where the same shall oblige the Owners, and where

IV. Of the natural and instru- XII. The derivation and institution of this fort of Loan, and for what causes.

XIII. Of the several wayes of taking up of Moneys by way of Bottomerie, real and feigned.

XIV. Moneys so advanced, whe ther gain ought to be bounded, or other wife left to the will of the Lender.

X V. of Ulura Maritima, how reasonable the same stands at this

Commerce at Land, and that XVI Of Moneys advanced to a considerable profit called ufufruit, being both honest and benourable.

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Oney is one of those things which they who want, want all other things but words to reproach their bad Fortune. But sometimes it is the policy even of Rags and Poverty it felf to undervalue that which it cannot have, and to convert that which it hath (though never fo mean) into an effect ; and then to lodge as much pride in a Tub, as Alexander could in a PalBook 2. Df Bottomery: or, fæmis Mauticum.

a Palace, though it could not tempt him to change of Condition.

Nil babet infalix paupertas durius in fe, Quam quod ridiculos bomines facit

No wonder therefore, seeing Rich men will be obstinate to hold to their advantages, that deformed Poverty (which mixes with them in the same frame as a shadow to seroff their Colours the better) would have the Rich to descend to them; and that instead of setting out Moneys by way of Bottomery, Vsiry and the like, they would not have any such thing as money at all, but would have all things reduced into a state as is afore mentioned.

* L 1. Cap. 1.

It cannot be denyed, but that we all live by the na- \$. 1,22, 3- tural or intrinsique value of things; but the way to come by them is by an Instrument of civil value, which is Money; instead of Community therefore we now have Commerce: which Commercium is nothing else but Communio mercium; but Communion must needs be by the means of another thing that may bear equal proportion on both sides, which is Money onely. But now let us hear and if possible satisfie the complaints that are made against it so impatiently.

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felf a Sin ?

Where there is great Luxury, there must be likewise great Industry to maintain it; and therefore the Industry of this Civil State, must be greater than that which is in the simple state of Nature: But what is there here to blame, seeing Industry no more than Plenty is in it

II. It is the Answer of Envy or Ignorance, Prima peregrinos obseana pecunia mores—intulit—Money is that (say they) which maintains the Trade and Credit of Vice, if that were taken away, we should look after nothing but necessaries, which are vertuous; it makes too nice inequalities and distances, and is not significant enough in the best things: for all the Money in the World is not really worth one penny loaf, which is convertible into our Natures and Substances; it serves

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De Bottomery For,

Book 2.8

* Aristotle Polit.

of Campanella Monarch. Hisp. only to affure Fortune, but not Virthe, it is accepted as the measure of all things Natural, Moral, and Divine for Honour, is nothing but ancient Riches , and in Morals, Virtus post nummos; This in Religion breeds that root of all Evil, Covetousness for in a simple state of Nature necessary things must need be spent within a short time, and the return of the Sun brings a new supply and a Treasure greater than the Indies; Of which One t makes this Observation, That it was got in blood, sayles home in a Sea of blood, and never rests till it be laid out in blood. This was that which was made the Price of Salvation, even of the blood of our Blessed Salvation, and worlds; but in the Religion of the first times, Nullo violatus Inpiter auro, as Tuvenal hath it.

And if this had not been brought into the World, we should not have so much to discount for at the day of Judgment. Why therefore should that which is condemned to the obscurity of the Earth, and lodged so near Hell, now be made the price of all that which is above the Earth, even a Solo use, Calum? Or why should we be excluded from the Gift of Nature, unless we have those of Fortune? Is it not then more reasonable that Rich men lose this Instrument of Luxury, than the Poor should lose the necessary means of their subsistance? This is the Plea which is made in forms

Pauperis. Et de ipsa paupertate.

Most certain it is, that neither the stupid simplicity of the Woods, nor Poverty it self are any part of Virtue, and therefore are not reckoned Blessings, as Riches were to Solomon, (he who built Gods first Temple; and put his Religion in lustre) and as they likewise were to Nama, from whom Money was called Nummus: He likewise built the first Temple at Rome, and kindled first the Vestal fire, & serocem populum deorum metu mi-

tigavit.

III. We know how God conversed with Abraham who was the first that had Money, and made use of it to buy a Property: It is true, they with whom he inhabited called him a Prince, but that was no argument to

him

him to disown their properties, but for the contrary left they should think that Dominion or a right to things was founded in grace.

IV. But to come more close to the Question, and to examine the reason and necessity of this measure; Monev is like a Law or Government, which are all confituted by the fame extream necessity; therefore the counterfeiting or attempting to defroy any of these by private means is every where Treason. Now this measure is two fold, either Natural or Civil, or rather natural, and the Instrument which expresses the natural by equal Permutation: The natural measure is proportioned either by Want, or Plenty; In Want we confider whether the thing be useful or necessary; things which are neceffary are best, but of least price, as a Loaf of Bread is more necessary, but infinitely cheaper than a Diamond. One man hath Cloathes, another man hath Leather; those two possibly have no need one of another, and therefore there will be no Permutation betwixt them; but if one had need of another, then he who were most prest, would come to the price of the other: And therefore Want or Plenty is the measure of estimating things, and is the bond of Society, whereby one man shews he is or may be useful to another; and Nature hath so ordered it, that no man is so Rich who hath not some need of the Poor; and no man is so mean and abject, but he may be some wayes useful to the Rich red

V. The Civil Measure or rather Instrument where-Money is like by the Natural expresses it self, is Money, which hath the middle term of a Sylbut a feigned value, and therefore it is sometimes higher logisme, of and lower in esteem as men please; which could not be, which it is and its value were natural which is unalterable. If I faid, Quo conhave Cloth at such a price, and you have Wines at the venint in ter-fame price, then we regarding the same price may make inter st. an equal Permutation: Or if I give to you so many pieces of Gold for your Cloth at the same price, the Sale is equal again, whether it be an inconvenience that generally in in some Countries † it is sometimes at a higher value than most of those at another, is not a consideration of this Discourse; for Northern

the Countries.

the price of things themselves change more than any Money doth daily.

V I. Money is an invention onely for the more expedite Permutation of things; but it doth not follow that men may not make any Permutations but by Money. even as well now as if we were in our natural state; if they who digg now in wast Hills had their Harvest of their Beans well gathered in, but had need of Wine for the Stomachs fake, or of Druggs for healths fake, if the Vintner, or Apothecary have no need of Beans; what use will they make of the Natural value of their Beans without Money? Or if need be, what would they do till their Beans are gathered? Money therefore hinders not Permutation and Commerce of natural things, but allists them; nay, it is therefore an Instrument of Instruments: For he who hath Money, may buy things which he need not use but sell, thereby to get other things afterwards for his use. There is no Nation or People so barbarous, but have Money or a publick Instrument of Permutation either in Metals or Fish-bones, &c. for it imports not fo much of what matter it is, provided it be durable, not counterfeitable, and difficult to come by.

VII. Take away this fungible Instrument from the service of our necessities, and how shall we exercise our Charity, which is a branch of Religion and Justice, as well as of humanity? He who goes to Church paffeth as it were thorough two Temples, the Poor at the Porch, and the Temple it self: and the giving at the Porch is called Sacrifice, Offering and Gift, as well as that at the Altar. God would be facrified to onely in one Town of the World, Ferusalem: But could that have been, if Money and Money-changers had not been allowed? How could they who came from such remote places have by any other means brought their Oxen, Calves, Goats and Doves to the Altar? If there were nothing further to thew, but that one piece, which our Saviour himself covned miraculously in the mouth of a Fish, it were Argument sufficient that the use

Vide Chap. of Exchange, S. 1.

VIII. Things being thus stated, and that Money is both good, just and necessary, it will be demanded foudly, That admitting a reasonable advantage may be made by way of Ulury, quo jure it is that an advantage upon the same more than what the Law allows, is taken?

The distinction is great between Moneys lent to be Lig. 3. D. de used in Commerce at Land, and that which is advan-Naus. fen. l. 1. ced to Sea. In the first, the Lawes of the Realm have rei Vindic. fet marks to govern the fame, whereby the Avaritious Locinius, lib.2. mind is limited to a reasonable profit; The reason of cap. 4. S. 2. that is, because the Lender runs none, but the borrower all the hazard whatever that money brings forth. But money lent to Sea, or that Which is called pecunia + tra- + Lee, Fen. jeditia, there the same is advanced on the hazard of the Naut. leg. peri-Lender, to carry (as is supposed) over Sea, so that if call code the Ship perithes, or a spoliation of all happens, the Lender hares in the loss without any hopes of ever receiving his Moneys; and therefore is called fometimes usura Maritima, as well as Fanus Nauticum; the advantage accrewing to the Owners from their Money, arifing not from the loan, but from the hazard, which the Lender runs; the which is commonly reduced to a time certain, or one or more Voyages, according to their feveral and respective agreements.

IX. If the Bonds be scaled and the money is advanced. if the Ship happens to miscarry by storm, Fire, Enemy, or any other wife before the Voyage begun, then the borrower runs the Risque, unless it be otherwise provided vide Passin at generally, as that if such a Ship shall not arrive at such leg. de Fan. a place at such a time, &c. there the contract hath its Naut. & D.D. inception from the fealing; but if the Condition be, Rhod. That if fuch a Ship shall fayl from London to Amsterdam, and shall not arrive there, &c. then, &c. There the contingency begins not till the departure. Yet it has been conceived. That if the Master takes up Money accordingly and buyes in a lawful Lading, but will happen

Vide leg. 3. C. de Fan. Naut.

· Leg. Naval.

Art. 17.

Art. 18.

to endeavour to defraud the Prince or State of their Customes, and puts such Goods aboard by means whereof he has incurred a forfeiture of his Ship; in such case the Lender is not obliged to fuch Hazard.

X. If money be lent on Shipboard by a Merchant fuper Cargoe or a passenger, and before the day of payment the Ship happens to be wreckt or cast away; if there be fuch a Saver as will admit a Contribution, then the party is not to have his whole money, but is to come into the Averidge: but if the time of payment were past before the misfortune happened, then the Lender must be repaid his whole Money free from Contribution.

And therefore by the Laws Maritime, if the borrower detains any such lent Moneys beyond the term appointed for the repaying, he shall at his return not only pay the profit agreed on before the Voyage, but also augment the same according to the time that hath accrued fince the day of payment.

* Testatur Viquem vide pag. 95.

Leg. Oleron. Cap. I. Leg. 4. D. de Naut. fen. l. I. C. eod. leg. qui Roma S. Callimachus de verb. obl. or ibi Gothfr. & alios.

X I. A Master of a Ship hath no power to take up nius in Pechium Money by Bottomerie, in places where his Owner or ad. LL. Nautic. Owners dwell, unless it were for so much only as his part cometh unto in the faid Ship : otherwise he * and his Estate must stand liable to answer the same. But when a Master is out of the Countrey, and where he hath no Owners, nor any Goods of theirs nor of his own, and cannot find means to take up by Exchange or otherwise, and that for want of money the Voyage might be retarded or overthrown, Moneys may be taken up upon Bottomerie, and all the Owners are liable thereunto; otherwise he shall bear the loss, that is, the Owners are liable by their Vessel, though the money is not so employed in truth; and the Owners have their remedy against him who they put in trust: but the persons of the Owners are no wayes made lyable by the act of the Master for moneys taken up.

Scarborrough If Owners agree not in fetting out the Ship, most and Lyrius, Pasch. 3 Car. voices shall carry it, and then money may be taken up in B. R. Rott. for 213. Noy 95.

for their part by Bottomerie, or Fanus Nantienm, or by

Hypothicating fuch a proportion of the Ship.

Many Mafters of Ships having Enfured or taken up Moneys upon Bottomerie to preater Sums of Money than 16 Car. cap.6 the Value of their Adventure, do wilfully cast away, A good Law, burn, or otherwife destroy the Ships under their charge, and ought so the same was made Felony, and the person or persons be encourafo wilfully doing or procuring the farne to be done, it was not were to fuffer death.

continued.

subrad of men

X I I. The fignification of this Ferms Nauticum, is by the Dutch called Bomerie, Bedmerie, Bodemerie, Boddemetaj; so variously pronounced from the Keel + or + Job Locini, bottom of the Ship upon the parallel, whereof the Rud-1.2 cap.4.5.1. der of a Ship doth Govern and direct the same, parte Latches Rep. pro toto sumpta, ita primum appellata, cum etiam Lingua borougo's case. Gallorum antiqua & Britanica Bodo vel Bodun fundum aut profundum signes + in quem navis fundum, vel ipsam na- + Teste camdeno vem ejufq; ufum mutuo accepta est pecunia, sed postea latius in Britannia, pro fenore nautico etiam usurpari capit. And the p.m. 149. Money to taken up by the Master is done upon great Locinius lib, 20 extremity, and that for the compleating of the Voyage Cap. 4. S. I. when they are in diffress and want in some Forraignparts; and indeed fuch taking up is indeed in the nature of Mortgaging the Ship, for le Neife oblige al payment de ceo, oc. And in the Instrument there is a Clause that expresses that the Ship is engaged for the performance of the same.

Moneys that are advanced are upon two Securities. the one is on the bare Ship, the other upon the person of the Borrower, sometimes upon both: The first is where a man takes up Moneys and obliges himfelf, that if such a Ship shall arrive at such a Port, then to repay (perhaps) double the fum lent; but if the Ship happens to miscarry, then nothing,

XIII. So likewise some will take up Moneys, the condition reciting, Whereas there is fuch a Ship, naming her, bound to Amsterdam, whereof such a Man is Master, (whereas indeed there is no fuch Ship or Master in na-

ture)

ture) that if that Ship (hall not arrive at fuch a place

Nant. fan. 4.

cunia propter

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Served by

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dare Creditor

within 12 months, the money agreed on to be paid shall be paid , but if the Ship shall arrive then nothing. The first of these is honourable and just according to the laudable practice among Maritime persons; and though the advantage runs high, as 20, 30, nay sometimes 40 per Cent. without confideration of time; for Thetit. Dig. the Moneys are to be paid within so many days after Cod. de Naut. the Ships fase arrival; yet in regard the Adventure is fen. & Doctoborn by the Lender, (for if the Ship perilhes, the adrum Ge bardus . vancer loses) the Lawes and Practice of all Maritime in tit. Cod. de Countries allow of the same. And therefore by the Common Law, if an Action of Debt be brought on fuch Trajectitia pean Instrument, the Defendant cannot plead the Statute of Usury. And so it was adjudged where one Sharpley had brought an Action of Debt on a Bond for Moneys taken up upon Bottomerie; The defendant pleads the navis, infinitas Statute of Usury, and shewed, that a certain Ship called made a Voyage to Fish in Newfound Land (which Journey might be performed in eight months) and the Plaintiff delivered 50 l. to the Defendant to pay 60 l. at the return of the Ship to D, and Anianus, Quia Maris periculo, if the faid Ship by Leakage or Tempest should not return from New-found-Land to D, then the Defendant

should pay the principal money; and if the ship never

returned, then nothing to be paid. Upon * Demurrer it

was adjudged the same was not Usury: for if the Ship

had stayed at New-found-Land 2 or 3 years, yet at her return but 60 l. was to be paid; and if the never return-

poteft. Verum enim vero bic pro-

prie non verfari damnatum sænas sed compensationem aliquam periculi, quod creditor contra naturam mutui in se recepit patrim. Johannes Locinius. Lib. 2. Cap. 4. S. 1. & 2. * Trin. 6 Jac. in B. R. 2. Cro. 258. Sharpley verfus Harroll,

ed, then nothing.

The other advance which is upon a fictitious suppofition of a Ship and Matter, where indeed there is no fuch in Nature, is more unconscionable, the same being the common practice that's used amongst the Italians, and now on this fide the Water: The fame is as

to internal Right unjust, and cannot now be determined, fince it was not long fince adjudged * that such * C. B. Hill. Contract was good, according to the Common Law of 22,23 Car. 2. this Realm, and that on a Special Verdict.

XIV. Most certain it is, that the greater the danger is, if there be a real adventure, the greater may the Vide Carolus profit be of the Moneys advanced: * And so hath the Molinaus de same been the Opinion of Civilians, and likewise some ait, box appropriet or advantage ought to be made of Moneys so Theologi at Crelent, no more than of those that are advanced on simple ditor possis loan, and on the peril of the borrower. However, all altra sertem proor most of the Trading Nations of Christendome do at susceptes by reason of the contingency or hazard that the Lender by that must be upon a real wayes, and a profit may arise so that there runs a peril on the Lender.

Cl. Salmafius, cap.9. de mode

usur. so. 380. 188. 218. Trajestitia pecunia propter periculum creditoris, quamdin navigat navis, infinitas usuras capere potest. Upon which place Anianus observes, Quia maris periculo committitur in quantas convenerit usuras banc pecuniam dare Creditor potest. Vide Novel. Const. 106. 110.

There is likewise a second way of advancing of Moneys called Ujura Maritima, joyning the advanced moneys and the danger of the Sea together; And this is obliging fometimes upon the Borrower's Ship, Goods and Person: The produce of which by agreement will advance sometimes 20, 30, and sometimes 40. per Cent. As for instance, A private Gentleman has 1000 l. ready money lying by him, and he has notice of an Ingenious Merchant that has good Credit beyond Seas, and understands his business fully, applys himself to him, and offers him 1000 l. to be laid out in fuch Commodities as the Merchant shall think convenient for that Port or Country the Borrower designes for, and that he will bear the adventure of that Money during all that Voyage; (which he knowes may be accomplished within a year) hereupon the Contract is agreed upon, 6 per

Book 2

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tesura legitima Cent. is accounted for the Interest, and 12 per Cent. for the Adventure outwards, and 12 per Cent. for the goods statistian pecuniam trans homeward; so that upon the return the Lender reniam trans ceives 30 per Cent. which amounts to 1300 l. The
feneratur, id Lender in this case hath a good bargain, no question.

est cum periculo Now let us see what advantage the Borrower hath.

- Sum at Interest which comes to 6. per Cent. and Brocage which comes now in this Age thorough the generostry of the Merchaut, and Covetousness of the Scrivener, at 1. or 2. per Cent. more; and then the same is let out but for 6 months, and then the Scrivener inevitably at the 6 months ends sends his Note, that his Friend expects his Moneys to be paid in; so that to stop that gapp there must be Continuation, which is at least one per Cent. more, besides the obliging of Friends in Securities.
- 2. The Assurance prevented, which perhaps may come to between 5 and 20 per Cent. according as the Times are, and common prudence will never suffer a Merchant to venture 2. parts of 3. parts of his Estate in one Bottome without assuring.
- 3. As he shall not have occasion to Ensure, so it may be a great occasion of preventing the common Obligation of his Ensuring of other; the which in a generous Merchant in honour cannot be denyed, the Premie running pretty reasonable.
- 4. It prevent the parties running the Rifque and danger of the Seas, Enemies, or any other fatal lofs, and hath been a means to introduce a mans credit in a fhort time at leffer charge, if not to put him in a Condition not to be beholding to such a fair, though chargeable means.

And this cannot be Usary by the Lawes of this Realm, for the Risque and Danger that the Lender runs.

XVI. There

VI. There is also another way, but that is both Honest and Honourable, called Usufruite, that is a leader. Stock in a Company or Society which is perpetual; In the Eastfuch a Stock or Portion may be purchas'd, that is, the forme other. advantage or benefit ariting by the improvement of the Companies. fame.

As for Instance, The East-India Company hath a Stock lodged in their hands by divers persons, which they in the those prudent'st manner as they see fit, imploy to those places as they judge most proper; if a return is made, the advantage of that is diffributed to each person that is any way entitled to that Stock; which advantage is called a Divident, and perhaps may afford fome years 20 or 30 per Cent : But on the other hand. if that that proportion of the Stock which goes out happens to miscarry, the abatement is proportionable, and fo the Stock may be reffered, unless that they will flav the Dividents to keep the Stock; the which they may do, For it is a Trust reposed of so many mens Moneys. in their hands, to yield them such advantage as they shall tion a just decount fet out : So that if a man hath a Pindford ver-1000 1. Stock, he cannot take the fame out of the Great Pasch. 27 Car. Stock whereby to leffen the fame, but he may transfer 2. in B R. adthat usu-fruite by that Customary way which they have judged there that uju-fruite by that Cuttomary way indication infini. on a Special to any other person, for a valuable consideration infini. on a Special Verdict. tum. Such a Stock of too ! in the East-India Company in time of War might have been purchas'd for 80 1. Nett: but now in time of Peace scarce got under 170, or 180 1. the Dividents running high.

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CHAP. XII.

Of Impositions called Great Customes, Petty Customes, and Subsidies.

I Impositions, whether they may be commanded without the Three Estates, and of Magna Charta touching the same.

II. Of Impositions made voluntary by consent of Merchants, and of the adnull of the same.

III. Of the Confirmation of the Great Charter for free Traffique; and of the Settlement now made on his Majefty of the same.

IV. Of the Immunities formerly of the Hansiatique Towns here in England, and when determined.

V. Of the Antiquity of Customers or Publicans as well in former Ages as at this prefent time, in most Nations.

VI. Of the Imposition called Magna Custuma.

VII. Of that which is called Parva Cuftum payable by firmgers, and the Act called commonly Carta Mercatoria.

VIII. Of Subsidy, and of what, and the Rates how set.

IX. Of Subsidy by Strangers on Wines.

X. Of Goods not rated bow to

(1. Of the Subfidy-Duty for Cloaths.

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I. That Impositions neither in the time of War or other the greatest necessity or occasion that may be, (much less in the time of Peace) neither upon Foraign nor Inland Commodities of what nature soever, be they never so superstuous or unnecessary, neither upon Merchants Strangers nor Denizens may be laid by the King's absolute Power without Assent of Parliament, be it never so short a time.

By the Statute of Magna Charta, Cap. 30. the words are, All Merchants if they were not openly prohibited before shall have their safe and sure Conducts, to enter and depart, to go and tarry in the Realm, as well by Land as by Water, to buy and sell without any Evil Tolls, by the Old and Rightful Customes (except in the time of War) and if they he of the Land making War against Us, and he found in Our Realm at the beginning of the War, they shall he attached

attached without barm of Body or Goods, untill it be known to Us or Our Justices how Our Merchants be intreated there in the Land making War against Us. The Statute of which this is a branch, is the most ancient'st Statute Law we have, won and sealed with the Blood of our Ancestors, and so reverenced in former times, that it hath been 29 times solemnly confirmed in Parliament.

II. Impositions were in some sort done Consensu Merentorium, by Edward the First, and Edward the Third: Rott. Almaign. And again in Henry the Eighth, of which the House of 3 E. 3. Rott. Burgundy complained as against the Treaty of Enter-29 Ed. i. Excourse.

King Henry the Third finding that such a Modus of Imposition tended to the destruction of Trade, and apparent overthrow of Commerce, and was against the Great Charter, made Proclaimation Anno 16 in all Ports of England, That all Merchants might come faciendo pors, claus, and restas of debitas consucendines nee sibilitation de malis tol-16Hen. 3. n. 20. in, for that such Impositions had no better name then Maletolts.

The like was declared and done by Edward the First in the 25th year of his Reign, and Edward the Second, in Rott, Claus, the 11th and 12th years of his Reign.

fique was confirmed; and about fome 3. years after there were Commissions granted for the raising of a new kind of Tillage, but the people complained; where- 12 Ed. 3. upon the Commissions were repealed, and he promised demb. 22. in never to affect any but as in the time of his Ancestors. dors. Ratt. Al-

But this Prerogative Power of Imposing inward and maignioutward upon Commodities over and above the ancient
Custome of Subsidy without a free consent in Parliament, is now ceast and settled; And that Question
which for many Ages had been handled by the most
Learned'st of their times, in the afferting and in the The Parliadenying, will never more be remembred: Which being ment having
managed for sometime was afterward farmed out: The justly, honourably and yo-

luntarily humbly presented such and many more who are established on his

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like having been done by former Kings, as did Edward. the third with the New and Old Cuttomes of London Clauf. Anno for 1000 Marks monthly to be paid unto the Ward. 5 Ed. 3. rope.

Richard the Second, Anno 20. Farmed out the Sublidy! Original. 17 Ed. 3. Rott. of Cloth in divers Countries.

So Edward the 4th, Henry the 8th, Queen Elizabeth, and King James; the fame having been used in former Ages even in the best govern'd State, Rome, which let out Portions and Decim's to the Publicans.

Vide the great Case in Mich. 4 Jac. in the Exchequer versus Bates. Lane Rep. 10, 22.

IV. The Old Bante Towns, viz. Lubeck, Collen, Brunswick, Dantzick and the rest, had extraordinary Immunities granted unto them by our Third Henry, for! their great athitance and furnishing him in his Warrs and Naval Expeditions with fo many Ships; and as they pretended the King was not onely to pay them for the Service of their Ships, but for the Vessels themselves in case they miscarried: The King having concluded a Peace, and they being on their return home for Germany, the most considerable part of their Fleet miscarried by ftorm and ftress of weather; for which according to Covenant they demanded reparation: The good King in lieu of that which he wanted, Money, granted them divers Immunities; and amongst others, they were to pay but 1. per Cent. Custome, which continued till Queen Mary's time, and by the Advice of King Philip the enhanced the 1. to 20 per Cent: The Hans not only complained, but clamoured aloud for breach of their Antient Priviledges confirmed unto them by long Prescription from 13 successive Kings of England, and the which they pretended to have purchased with their Mos ney: King Philip undertook to accommodate the bufness, but Queen Mary dying, and he retiring, nothing was effected. Complaints being afterwards made to Queen Elizabeth, she answer'd, That as she would not innovate any thing, so the would protect them ftill in the Immunities and Condition she found them. Hereupon their Navigation and Traffique was suspended a while which proved very advantageous to the English, for they tryed

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what they could do themselves herein, their adventures and returns proving successful, they took the whole Trade into their own hands, and fo divided themselves to Stapters and Merchant-adventurers; the one refiding constant at one place, the other keeping their course and adventuring to other Towns and States abroad with Cloth and other Manufactures: This fo nettled the Hans, that they devised all the wayes that a discontented people could to draw upon our new Staplers or Adventurers the ill opinion of other Nations and States: but that proving but of too small a force to stop the Current of so strong a Trade as they had got footing into, they reforted to fome other; whereupon they applied themselves to the Emperour, as being a Body incorporated to the Empire; and upon complaint obtained Ambassadors to the Queen to mediate the business: but they returned still re infecta: Hereupon the Queen caused a Proclamation to be published, That the Merchants of the Hans (hould be intreated, and used as all other Strangers within her Dominions in point of Commerce, without any mark of distinction.

This enflamed the more, thereupon they bent their Forces more eagerly, and in an Imperial Dyet at Ratsbone they procured that the English Merchants who had affociated themselves in Corporations both in Embden and other places should be adjudged Monopolists; whereupon there was a Comitial Edict procured against them that they should be exterminated, and banished out of all parts of the Empire; which was done by Suderman a great Civilian. There was there at that time for the Queen as nimble a man as Suderman, and he had the Chancellor of Embden to second him, yet they could not stop the Edick, whereby our new erected Society of Adventurers were pronounced a Monopoly: Yet Gilpin played his Cards so well, that he prevailed the Imperial Ban should not be published till after the Dyet; and that in the interim his Imperial Majesty should send an Ambissador to England to advertise the Queen of fuch proceedings against her Merchants. this Gg 3

this made so little impression on the Queen, that the Ban grew rather ridiculous than formidable, for the Town of Embden harboured our Merchants notwith-standing, and afterwards the Town of Stode; but the Hansatiques pursuing their revenge, and they being not so able to protect them against the Imperial Ban, removed and settled themselves in Hamburgh.

This Politique Princes in recompence of their revenge commanded another Proclamation to be published, That the Hansaique Merchants should be allowed to Trade into England upon the same Conditions as they formerly, did, Provided the English Merchants might have the same Priviledges to reside and Trade peaceably in Stode or Hamburgh, or any where else within the Precincts of the Hans. This so incensed and nettled them, That all endeavours were made to cut off Stode and Hamburgh from being Members of the Hans, or of the Empire: But the design was suspended till they saw the success of 88, King Philip having promised to do them some good Offices in the Concern.

But the Oueen finding that the Hans were not contented with that Equality she had offered to make betwixt them and her own Subjects, but were using fuch extraordinary means; put forth another Proclamation, That they should transport neither Corn, Vichuals, Arms, Timber, Masts, Cables, Metals, or any other Materials or Men to Spain, or Portugal. And not long after the Queen growing more redoubled and Famous by the Overthrow of King Philip's Invincible Armada, (as the Pope Christned it) the Hans began to despair of doing any good, especially they having about some 60 Sayl of their Ships taken about the River Lifbon by her Majesties Frigats, that were laden with Ropa de contrabanda. She notwithstanding had thoughts of discharging this Fleet by endeavouring a reconcilement of the differences: but the having intelligence of an Extraordinary Affembly at Lubeck which had purpolely met to consider of means to be revenged of her, she thereupon

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thereupon made absolute prize of those 60 Sayl, onely two were freed to carry home the sad Tydings of their Brethrens missortune. Hereupon the Pole sent a ranting Embassador in the behalf of the Hans, who spake the Injuries done to the Hans in a high tone. But the Queen her self suddenly answered him in a higher, with a satisfaction no greater than what she had done to others of the like quality before.

This fortunate Clashing for the 19. per Cent. on the Customes, has proved ever fince advantageous for England, our Merchants have ever fince beaten a peaceful and an uninterrupted Trade into High and Low Germany; and by their constant Trade in those Parts have found a way through the White Sea to Archangel and Mosco. The return of all which hath since vastly encreased the Riches and Strength of this Na-

tion.

V. After the Jews became Tributary to Roms, Joseph locurus (which was acquir'd by Pompey Threescore years belib. 1. de Pompeio, fore the Birth of our Saviour) certain officers or Com-Jud. eap. 5. missioners were appointed by the Romans in all those pag. 720. places where their Victorious Standards had claymed a Conquest, who used to appoint such Officers or Commissioners to Collect and gather up such Custome-moment or Tribute as was exacted by the Senate. Those that gathered up these Publique payments were termed Sigon. de Annualisation Publicanies, and by reason of their cruclety, Jure Civum and Oppressive Exaction, they became hateful in all Rom, lib. 2. Nations.

Every Province had his several Society or Company of Publicans; Every Society his distinct Governour: in which respect it is that Zaccheus is called by the Evangelists, Princeps Publicanorum, the chief Receiver Luke 13.2. of the Tribute, or chief Publican; And all the Provincial Governours in these several Societies had one chief Master or Superintendant residing at Rome, unto whom the other subordinate Governours gave up their Accounts. These Publicans were hated of all the

Gg 4

Roman

If. Canfabox. Exercit. 3. 37.

Roman Provinces, but especially of the fews, because though it was chiefly maintained by the Galileans, yet it was generally inclined unto by the Jews, That Tribute ought not to be paid by them. This Hatred is confirmed by the Rabinical Proverb, Take not a Wife out of that Family wherein there is a Publican for such are all Publicans. Yea, a Faithful Publican was to rare at Rome it felf, that one Sabinus for his honest managing of that office, in an Honourable remembrance thereof had certain Images with this Inscription, Suton. in Flav. Kaxos rexernoarls, For the Faithful Publican. 'No marvel that in Holy Writ Publicans and Sonners go hand in hand.

Vefp. 6. 1.

But now the World has been fo long used to them. that in all or most Nations the particular Princes or States chuse out the most Sagest and Prudent'st men for that Imployment: And certainly the Customes of this Realm never did return to that great and clear Account as they have done under the Care and Prudent management of the present Commissioners : And were Tertulian alive, he would have Recanted that Opinion of his, That none would be a Publican but a

Tertullian. Printed 16091) de pudic. Cap. 9.

> VI. Customes are Duties certain and perpetual payable to the King as the Inheritance of his Crown. for Merchandizes transported from and beyond the Seas from one Realm to another. Magna Cuftuma & antiqua is payable out of Native Commodities, scilicet. Wooll, Woollfels and Hides, and that is certain imposed.

> And this Custome which is called Magna Custuma, is due to the King of Common Right for four Cau-

fes:

Heathen.

1. For leave to depart the Kingdom, and to carry Commodities of the Realm out of it.

2. For the Interest and Dominion which the King hath in the Sea, and the Arms thereof.

3. Because

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- 3. Because the King is the Guardian of the Ports within the Realm, & Custos sorius Regni.
- 4. For Wharfage and Protection of Merchants upon the Seas against the Enemies of the Realm and Pyrats.

VII. The Custome which is called Parva Castuma, is a Custome or Duty payable by Merchants Strangers, and begun in the time of King Edward the First, I Bliz. Dur when they granted him, that they would pay to him 165 and his Heirs 3 d. in the pound for all Merchandizes Exported and Imported by them, &c. And that the Charter was and may be of great Use, I have here inferted the same, as it is Faithfully Transcribed out of the Roll in the Tower.

For

in Our Klagdon' of

Out Domination a green, domoif Tranquiller, and iv [6] conservator she had

osente, Caldador Dakedoms of Tholom, Turcin ders, Bridens, Caldador Caldador For Merchant Strangers concerning Liberties granted to them.

31 Ed. 1, num. 44. intus.

He KING, to his Archbishops, &c. fendeth Greeting. Concerning the good Condition of all the Merchants of the Kingdoms, Lands, and Provinces underwritten: That is to fay, Germany, France, Spain, Portugal, Navarr, Lomberdy, Tufcany, Provense, Cathalonia : Our Dukedoms of Aquitain, Tholow, Turein, Flanders, Brabant, and all otherLands, and forrein places, by what name foever called, coming into Our Kingdom of Empland, and there remaining.

We being very folicitious, out of Our especial Care, that under Our Dominions, a freedom of Tranquility, and full Security for the said Merchants may be provided for the future, so as they may the more readily apply them-

Pro Mercatoribus Alienigenis de Libertatibus eis concessis.

DEX, Archievil ec. Salutem. Circa bonum fatum omnium Wercatozu lublcripto. ra, Regnozum, Terrarum, & Probinciarum, bibelicet , Alemann. Franciæ, Ispaniæ, Portugaliz, Navarr. Lumbardiæ, Tusciæ, Provinciæ, Catholoniæ, Ducatus nostrí Aquitann. Tholosan Tatureini Flandr. Brebant. & omnium alis arum terrarum, & locorum ertraneozum quocunque nomine cenfeantur benientium in Reanum noftrum Angliæ & ibidem convertantium.

Nos precipua cura folicitat, qualiter sub nostro dominio tranqui, litatis, & plene secuti, tatis immunitas eildem Gercatoribus suturis temporibus preparetur: ut iraque bota ipsorum reddantur ad nostra, & Regni nostri Servicia promp

promptiora; iplorum Petitionibus favorabiliter annuentes, † pro latu eorundem plenius affecurando, in forma que lequitur ordinantes lublcripta, dictis Dercatoribus pro nobis, † heredibus nostris in perpetuum durimus concedenda.

Imprimis, Clivelicet, auod omnes Mercatores diagum Regnozum e terrarum falvo, e fecure sub tuitione & protectione noffra in dictum Regnum noffrum Angliæ, & ubiq; infra potestatem nostram alibi veniant cum Perchanbilis fuis quibufcunque, De Muragio, Pontagio, Pavagio, liberi & quieti: quoque infra idem Regnum & Poteffatem nottram, in Civitatib9, Burgis & Aillis, Wercatozijs pollint mercari. duntaxit in groffo, tam cum Indigenis, leu Incolis ejuldem Regni, e potestatis nostre predicte, quam cum Alienigenis ettraneis

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felves to the fervice of Us,& of Our Kingdom, We graciously answering their Petitions,&ordaining more amply for fecuring their Condition in form following underwritten, are pleased to grant to the said Merchants for Us and Our Heirs for ever.

Imprimis, That is to fay, That all Merchants of the faid Kingdomes, and Lands, may come from any other place, fafe and fecure under Our Tuition and Protection into Our faid Kingdome of England, and every where within our Dominion, with their Merchandizes of what fort foever and be unmolested, and quiet (a) Repairconcerning (a) Murage, ing publick (b) Pontage, and (c) Pa-walls. vage, and that within ges. Our faid Kingdom, and (c) Pave-Dominion, they may mints. Traffique in the Cities, Boroughs and Market Towns, onely in groß, as well with Natives or Inhabitants of this Our King-

Cuffontes.

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Kingdom and Dominion aforesaid, as with Strangers Forriegn and Domestick; But so, as their Wares vulgarly called Mercery or the SPECIES thereof, they may fell by retail, as formerly hath been accustomed. And that all the faid Merchants may carry, or cause to be carried whither they please, their Merchandize which they have brought into Our faid Kingdom, and Dominion, or otherwise acquired, Except to the Lands of the manifest and notorious Enemies of Our Kingdom, paying the Customs which shall be due, Wines onely excepted, which shall not be exported out of Our faid Kingdom or Dominion, after they have been Imported into Our faid Kingdom, or Dominion, without Pleafure and specialLicense, by any way or means whatfoever.

vel pivatis. Ita tamen quod Merces que bulgariter Merceria, vocantur ac Species, minaciation Dendi polfint, prout antea fiert confuebit : Et quod omnes predicti Wercatozes Berchandifas fuas quas iplos ad prediaum Regnum & Potestatem noffram adducere, feu infra idem Regnum & Potestatem noftram emere, vel alias adquirere contigerit ; postint quo voluerint, tam infra Regnum e Poteffatem no-Grain previctam, quam ertra ducere, sett poztare facere, præterquam ad terras manifestorum, & notorio. rum hostium Regni no. ffri, folbendo confuetus dines quas debebunt, Vinis duntaxit excep_ tis,que de eodem Rea. no, feu poteffate nas fira, poliquam infra ide Regnum, feu Poteffa, tem noffram ducta fues rint, fine voluntate noffra & licentia Speciali, non liceat eis educere quoquo modo. Ite m,

Item, quod predicti Derecatores, in Civitatibus, Burgis predictis pro voluntate lua hospicati valeant, e moac Aillis rati cum bosnis luis, ad gratum iplozum quorum fuerint hospitia live nomus.

Item, quod quilibet Contradus per iplos Mercato. res cum buibufcunque perfonis, undecumque fuerint, fuper quocumque genere Merchandilæ, unitus, fitmus fit & flabilis; ita quod neuter Mercatorum ab illo Contractu poffit difcedere, bel refflere, postquam denarius Dei inter principales personas contrahentes, datus fuerit & receptus. ü fozlan luper contractu huiusmodi contentio oziatur, fiat inde probatio aut Inquilitio fecundum ulus, & confuetudines feriarum. & villarum ubi dictum contradum fieri contigerit, & iniri.

Item, Promittimus prestatis Percatoribus pro nosbis, a heredibus nostris, in perpetuum concedentes, quod nullum prisam vel arestationem, seu dilationem occasione prisa de cas-

Item, That the faid Merchants may lodge in the Cities, Boroughs, & Towns aforelaid, at their own pleasure and there stay with their Goods, to the content of them who entertain them.

Item, That every Contract made by the faid Merchants with what perfons foever, and from what places soever, for what kind of Merchandizes soever. shall be firm and stable, so that neither of the Merchants shall depart from, or go back from his bargain, after a Gods-penny is given and received, between the principal persons contracting; and if it happen that a Contention arile on the faid Contract, there shall be a Tryal, or Inquisition, according to the Usages and Customs of the Fairs, and Towns where fuch contract shall be made or begun.

Item, We promise to the aforesaid Merchants, and for Us, and Our Heirs for ever grant, That We by no means whatsoever will make, not suffer to be made any Prize, or Arrest, or de-

tention

tention by occasion of Prife, for the future, upon their faid Wares, Merchandizes, or other their Goods by Us, or by any other, or others in any case, and necessity whatsoever, against the will of the faid Merchants, without the price presently paid, for which the faid Merchants might fell to others, wares of the like fort for, or otherwise to fatisfie them, fo as they shall repute themselves contented. And that no Appraisement or value shall be put upon the faid Merchants Wares, Merchandizes, or Goods, by Us or Our Ministers.

Item, We will, That all Bayliffs, and Officers of Fairs, Cities, Boroughs, and MarketTowns, shall do speedy Justice to the said Merchants complaining to them, from day to day, without delay, according to the Merchants Law, concerning all and every thing which by the said Law may be determined: And if any defect shall happen to be found in any of Our Bayliffs or Ministers aforesaid,

tero de mercimonijs, Merchandisis, seu alijs bonis suis per nos, vel alium, seu alios, pro aliqua necessitate vel casu, contra voluntatem ipsorum Mercatorum aliquatenus faciemus, aut fieri patiemur; nisi statim soluto precio pro quo ipfi Mercatores aliis hujusmodi mercimonia vendere possint, vel eis alias satisfactio ita quod reputent se contentos, & quod fuper mercimonia, merchandisas, seu bona ipforum per nos, vel miniftros nostros, nulla appreciatio, aut æstimatio imponetur.

Item, Columns and omnes Ballivi, & Ministri feriarum Civitatum, Bur. gozum, & Willarum Mercas toziatum, mercatozibus ante diais conquerentibus coram eis, celerem justitiam faciant de die in diem sine dilatione, secundum LE. GEM MERCATORI. AM, de univertis & fingulis que per eandem Lenem poterunt terminari. Et fi forte inveniatur vefectus in aliquo Balivozum bel miniffrozum

nistrozum pzediadzum unve ijvem Percatozes, vel edcum aliquis vileus incommoda sultinuerint, del fultinuerit, licet Percatoz versus partem in pzincipali rea cuperaverit dampna sua, nichilominus Ballivus, vel minister alius versus Mos, pzout deliaum erigit, puniattir, e punitionem istam concedimus in savozem mercatozum pzediadzum, pro corum justicia maruranda.

Item, quod in omnibus generibus placitozum, falbo cafu criminis pro quo infitgenda fit pæna mortis, ubi Mercatur implacitatus fus erit bel alium implacitabe. rit, cuiuscumque conditios nis idem implacitatus extiterit, extraneus vel pris batus, in Bundinis, Civitatibus, five Burgis ubi fuerit fufficiens copia Der. catozum pzedictarum terrarum, e Inquisitio fieri des beat, sit medietas Inquisitionis de eisdem Mercatoribus, & medietas altera de alijs probis & legalibus hominibus loci illius, ubi placitum illud esfe contigerit: Et fi be Wercatoribus victa. rum Terrarum numerus whereby the faid Merchants or any of their Factors shall fusier loss, although the Merchant recover his losses against the party in the whole, Yet nevertheles, the Baylist, or other Ministers of Ours as the fault requires shall be punished; and We grant the said punishment in favour of the Merchants aforesaid, for compleating their right.

Item, That in all kinds of Pleas, faving in the cafe of Crime, for which the pain of Death is liable to be inflicted, where the Merchant shall be impleaded, or he implead another, of whatfoever condition he that is impleaded be of. whether a Forraigner or a Domestick, in the faidFairs, Cities or Boroughs, where there is a fufficient plenty of Merchants of the Lands aforesaid, and Inquisition there ought to be made. Half of the Inquisition shall be of the faid forraign Merchants, and the other half of honest and lawful men. where the Plea happens to be : And if a fufficient number of the Merchants of the faid Lands thall not be found, let those be put in the Inquisition who shall be found fit in that place, and let the residue be of other good and fit men, in the places in which that plaint shall be.

Item, We will, Ordain . and appoint, That in every Market Town and Fair of Our faid Kingdom, and elfewhere within Our Dominion, Our Weight is to be put in a certain place, and before weighing thereof, the Scale to be empty in the presence of Buyer and Seller, and the arms thereof to be equal, and when he hath fet the Scale equal, he is forthwith to take off his hands fo that it may remain equal; And that throughout Our whole Kingdom and Dominion, there be one Weight and Measure, both of them fealed with the fign of Our Standard, and that every one may have a Scale of one Quarteroni and under. where contrary to the Governour of the faid place, or Liberty by Us, or Our Ancestors, was not granted,

non inventatur sufficiens, ponantur in Inquisitione illi qui idonei invenientur ibidem, & residui sint de aliis bonis hominibus, & idoneis, de locis in quibus placitum illud erit.

Item, Molum, Didiname, & Statumus, quod in qualibet dilla Dercatoria, & feria Regni noffri predicti, alibi infra potestatem nos firam, Pondus nostram in certo loco ponatur, & ante ponderationem Statera in presentia Emptoris & Clenditozis vacua videatur, & quod brachia fint equalia, & er tunc Ponderatoj pondes ret in æquali, & cum State ram polucrit in æquali, flatim amoveat manus fuas ita quod remaneat in æqua-If, quodq; per totum Regnum, & potestatum nostram unum fit pondus & una mensura, & signo Standardi nostri signentur, & quod quilibet possit habere Stateram unius Quarteroni & infra, ubi contra Dominum loci, aut libertatem per Mos, seu Antecessores nos fires concessam islud non fuerit;

till & Poly on the tree tree

nierit, five contra villarum aut feriatum confuetudinem pacenus observatam.

Item, Columns, & concenimus quod aliquis cettus bamo, a fivelis, a difcretus London relivens, allignetur Justiciarius mercaroribus memoratis, coram quo paleant Specialiter placitare. a vebita fua recuperare celeriter, fi Micecomites c Majozes eis non facerent ne die in diem celeris justitiæ complementum, & inde flat Comiffio extra cartam mefentem concella Merca. toxibus ante victis, - scilicet be bijs que funt inter Dernatozes, e Mercatozes, fecundum LEGEM MER-CATORIAM peducent Da.

irem, Dedinanus, e Statumus, e Dedinationem illam flatutumque pro Nobis & Heredibus nostris in perpetum Volumus firmiter observari, quod peo quacumque libertate quam Mos vel beredes nostri de cætero concedimus, presati Percames supra scriptas Libertates, del eacum aliquam am amittant.

or contrary to the Custom of the Villages and Fairs hitherro observed.

Item, We will and grant; That fome certain faithful and discreet person refiding in London, may be appoint. ted a fustice in behalf of the before mentioned Metchants, before whom they may plead specially; and more speedily recover their Debts, if the Sheriffs, and Mayors, distribute not to them, day by day, compleat and speedy Justice that then a Commission be granted to the aforesaid Merchants, besides this present Charter, viz. Concerning those [Goods] which are to be conveyed between Merchants and Merchants, according to the Merchants Laws

Appoint, and Our Will and Pleasure is, for Us, and Our Heirs, That this Ordinance and Statute be firmly kept for ever; notwithstanding any liberty whatsoever which We or Our Heirs for the future shall grant; the said Merchants ought not to lose their above written

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Liberties, or any of them: And for and in consideration of their obtaining the faid Liberties, and free Ufages, and Our Prifes to be remitted to them: All and fingular the faid Merchants for themselves, and all others on their part, have heartily and unanimously granted to Us that for every Hogsbead of Wine which they shall bring in, or cause to be brought in within Our Kingdome, or Dominion thereof; and from whence they are obliged to pay Freight to the Mariners, to pay to Us and to Our Heirs, by the name of Custome two shillings over and above the Ancient Cufroms due, and accustomed to be paid in pence within Fourty dayes after the faid Wines are put on shoar out of the Ships.

Item, For every Sack of Wool, which the faid Merchants or others in their names do buy, and out of this Kingdom transport, or buy to transport, shall pay fourty pence over and above the ancient Custom of half a Mark, which former-

1920 supradicis autem libertatibus & liberis confuetudinibus optinendis, a Diffis noffris remittendis eilnem læpediai Percato. res universi & finguli pro fe & omnibus alijs de partis bus fuis, Mobis concolditer & unanimiter concesses runt quod de quolibet Dolio vini quod adducent, vel adduct facient infra Rega num, Doteffatem noftram, & unde Marinariis frettum folvere tenebuntur, folvent Mobis & Peridibus noffris nomine Custuma, ottog Sa livos ultra antiquas Cullus mas debitas, & in Denariis folvi confuetas, nobis aut alijs infra quadzaginta dies posiquam extra Mabes at Terram polita fuerint dida vina.

Irem, de quolibet Sacco Lanæ quem diai Percatores, aut alij nomine iplo tum ement, e de Regno nostro educent, aut emi, t educi facient, solvent quadraginta Denarios de incremento, ultra Custuman antiquam dimidiæ Marca

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que prius fuerat perfoluta: Et pro Laffo Coriorum extra Regnum, e Potestatem
noscam dependorum dimidiam Parcam, supra so
quod ex antiqua Custuma
autea solvebatur; Et similiter de trescentis pellibus
Lanutis, extra Regnum e
Potestatem nostram, deducendis, quadraginta denatios ultra certum illud quod
de antiqua Custuma fuerat
prius datum.

Irem, duos Solidos de qualibet Scarleta, e panno tinco in grano.

Item, Decem e octo des narios de quolibet panno in quo pars grani fuerit intermixta.

Item, Duodecim denatios de quolibet panuo alio fine grano.

Item, Duobecim benatios de quotibet Cera quintal.

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Cumque de prefatis Percatoribus nonnulii equini alias exerceant Perchandilas, ut de Averio ponderis, t de aligs redus, indtilibus ly was paid. And for a Last of Hides carried out of this Our Kingdom and Dominion thereof, to be fold, half a Mark over and above that which according to ancient Custome was formerly paid; and likewise for Three hundred Woollfels to be carried out of this Kingdom, fourty pence, besides that certain sum which according to ancient Custome was formerly given.

Item, Two shillings for every Scarlet, and Cloth dyed in grain.

hem, Eighteen pence for every Cloth in which part of a grain-colour is intermixt.

Item, Twelve pence for everg other Cloth without grain

Item, Twelve pence for every Quintal of Wax.

And whereas some of the faid Merchants deal in other Commodities, as Goods weighed with Avoir-dupou Weights, and in other Hh a fine

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fine Goods, as Cloth of Tarsen, of Silk,

* It is suppled of * Cindatis, of Hair, and in ditrick or other birth tiness.

fine Liness.

Horses also, and other Animals, Corn, and other Wares and Merchandizes of different forts, which cannot eafily be put to a certain rate of Custom: The faid Merchants have confented to give Us and Our Heirs for ever Twenty shillings Estimation and value of those Wares and Merchandizes, by whatfoever name they be called, three pence in the pound, upon the Entrance of their Wares and Merchandizes into Our Kingdom, and Dominion aforesaid, within twenty dayes after fuch Wares and Merchandizes shall be brought into Our Kingdom, and Dominion aforesaid, and there shall be unladen, or fold. And likewife three pence for every twenty shillings, at the Exporting of what kind foever of Wares or Merchandizes bought in Our Kingdom, and Dominion aforeficut de pannis Tarlen. de Serico, de Cindatis, de Seta, & allis diverlis mercibus, a de equis etiam, ac aliis animalibus Blade, & aliis rebus, & Derchandifis, multimodis, que ad certam Cullumam facile poni non poterunt, ifdem Det. catores concesserunt Dare Dobis, a Deredibus noffris qualibet libra argenti estimationis seu valoris res rum.e Werchandilarum bujulinodi quocunque nomine censeantur, tres denarios de libra in introitu recum, & Werchandilarum iplarum in Reanum, & Potestatem noftram predictam infra Cliginti dies, possquam bujub modi Res & Werchandile in Regnum & Poteffatem nostram adducte, a etiam fbidem exoneratæ, five ben Ditæ fuerint ; Et Similiter tres benarios de qualibet libra argenti in eductione quarumcunque rerum, ¢ Merchandilarum bujulmodi emptarum in Regno, t Potestate nostra predicts, ultra Custumas antiquas nobig, aut alijs ante batas. Et super valoze et essima tionererum & Werchand Carum

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farum hujulmodi, de quibus tres denarij de qualibet isbia argenti ficut predicitur funt foldendi; credatur eis per liceras quas de Dominis aut focijs fuis offendere poterunt, e a liceras non habeant, Stetur in hac parte iplozum Mercatozum ii prelentes fuerint, del dallettozum suozum in eozundem Mercatozum ablentia juramentis.

Liceat insuper Sociis Societate Mercatopzedictozum infra rum Regnum, & Poteffatem nostram predictam, nas vendere alijs focijs luis, & Amiliter emere ab elloem ablque Custuma folbenda; ita tamen quod dis de Lanæ ad tales manus non deveniant, quod Cufluma nobis debita defraubemur.

Et præteria est sciendum, quod possquam sæpedum sæperatozes semel in mo loco insta Regnum æ Potestatem nostram Custu-

faid, besides the antient Customs formerly given to Us or to others. And over and above the value and estimation of the saidWares & Merchandizes for which three pence for every twen. ty shillings as aforesaid are to be paid; they are to have credit by Letters, by them to be produced from their Principals or Partners, and if they have none, Let it be determined in this case, by the Oaths of the faid Merchants, or in their absence, of their Servants.

Moreover, It may be lawful for the Society of the Merchants aforefaid, to fell Wooll to the fellowes of the faid Society, and likewife to buy the fame one of another within Our Kingdom and Dominion, without payment of Cuftom: Provided that the faid Wooll come not to fuch hands whereby we may be defrauded of Our Customs.

And furthermore be it known, That after the faid Merchants have once in any one place within Our Kingdom and Dominion Hh 3 paid

paid our Customs granted, as aforesaid, to Us, for their Merchandizes in form aforesaid, and thereupon they have their Warrant, they shall be free, and unmolested in all other places within Our Kingdom and Dominion, from payment of the faid Custome for the same Commodities or Merchandizes by the faid Warrant, whether fuch Merchandizes remain with in our Kingdom, and Dominion, or are carried out, Except Wines, which without Our leave or licence, as aforesaid, are by no means to be Exported out of Our Kingdom.

We will also, and for Us, and Our Heirs grant, That no Exaction, Prize or Loan, or any other burden shall be imposed in any part or measure on the persons of the said Merchants, their Merchandizes, or Goods contrary to the sorm before expressed and granted.

Witness hereto, The Reverend Fathers Rober: Archmam nobis concessam super rius, pro Merchandilis luis in forma Colberint Suprabicta & Mam habeant inde Warrantum, erunt liberi d'quiett in omnibus aliis locis infra Regnum, e 190 telfatem noffram predictam, de solutione Custuma bus julmodi pro eilvem Berchandifis, seu mercimoniis per foem Warrantum, abe huiulmodi Werchandilæ infra Regnum, e Poteffatem nostram remaneant, übe exterius deferantur, Er. ceptis vinis, que de Regno a Poteffate noffra predictis, fine voluntate elicentiano. Ara licht predictum eff, nul latenus educantur.

Volumus autem ac pro Nobis & Heredibus nostris concedimus, quod nulla eractio, Prisa vel Prestatio, aut aliquod aliud onus super personas Dercatorum predictorum, Derchandias, seu bona eorundem aliquatenus imponatur, contra sormam expressam superius, concessam.

Die testibus venerabili bus Patribus Roberto Cantuariensi 0

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tuariensi Archiepiscopo totius Anglia Dimata, Waltero Coventr. & Litchf. Eniscopo, Henrie de Lacy, Camite Lincoln. Humfrido de Bohun Comite Hereford. & Effex, ac Conflabular. Angl. Adomar. de Valencia, Galfrido de Geynvill, Hugone le de Spencer, Waltero de bello Campo Senescallo Dospitii noffri, Roberto de Bures e alijs. Dat. pet manum noftram apud Westm. primo die febr.

bishop of Canterbury Primate of all England, Walter Bishop of Coventry, and Lishfield, Henry de Lacy Earl of Lincoln, Humphrey de Bohun Earl of Hereford and Effex, and Conttable of England, Adomarus of Valentia, Galfrid of Geynvil, Hugh de le Spencer, Walter de bello Campo Chamberlain of Our House, Robert of Bures, and others. Given by Our Hand at Westminfter the First day of Feburary.

VIII. Sublidy is a duty payable for Merchandizes Sir John Da-Exported and Imported, granted by Act of Parliament Case of Cufor the life of the King. And are, flowers.

1. Ayds and Sublidies payable out of Native Com-

modities Exported and Imported.

2. Tunnage, which is a subsidy out of Wines of all sorts; and Poundage, which is a subsidy granted out Vide the Stat. of all Commodities Exported and Imported, except 12 Car. 2. of Wines and ancient Staple Commodities, and is the Tunnage and 20th part of the Merchandize, Imposts or Duties pay-Poundage. able for Merchandizes rated and affessed by Parliament; and then they are in the nature of Subsidies imposed by the Kings Prerogative.

The Rates are generally agreed on by the Commons House of Parliament, and are express in a Book commonly called the Rates of Merchandize; that is to say, the Subsidy of Tunnage and Poundage, and the Subsidy of Woollen Cloaths or old Drapery, and are subsidy of Woollen Cloaths or old Drapery, and are sub-

scribed with the hand of the Speaker.

IX. All Merchant-Strangers bringing in any fort of Hh 4 Wines,

Wines, are to pay Thirty thillings in the Tun over and above the Rates which the Natives pay, including Twenty thillings the Tun formerly paid to His Mijefty by the name Southampton Duties, for all Wines of the growth of the Levant; for which fort of Wines. the Stranger is also to pay to the use of the Town of Southampton for every Butt or Pipe Ten shillings.

Vide in tit. Prifage.

Aliens are likewise to pay the Ancient Duty of Butlerage, which is 2 s. per Tun.

Rule. That all such Wines as shall be landed in any of the Out-Ports, and Custome paid, and afterwards brought to the Port of London by Certificate, shall pay so much more Custome as they paid short of the Duty due in the Port of London.

Directions on Tunnage.

For every Tun of Beer to be Exported in thipping English built in money must be paid Two shillings: And for every Tun of Beer Exported in any other shipping in money fix shillings.

Directions in Poundage.

X. If there shall happen to be brought or carried out of this Realm any Goods lyable to the payment of Custome and Subsidy which are omitted in the Book of Rates, or are not now used to be brought in or carried out, or by reason of the great diversity of the value of some Goods could not be Rated; That in such case every Customer or Collector for the time being, shall and may levy the faid Custome and Subsidy of Poundage according to the value and price of fuch Goods to be affirmed upon the Oath of the Merchant In the presence of the Customer, Collector, Comptroller and Surveyor, or any two of them.

Directions for the payment Clothes or old Drapery.

XI. Every Englishman shall pay for every short loth containing in length not above 28 Yards, and of the Subfidy in weight not above 64 l. white or coloured by him to upon Woollen be fiipped and carried out of this Kingdom, Three shillings sour pence, being after the rate of two farthings and half a farthing the pound weight.

And fo after that rate for all other forts of Clothes

of greater length and weight, allowing not above Twenty eight yards, and fixty four pound to a short Cloth; that is to say, for every pound weight over and above fixty sour pound, two farthings and a half farthing: and for all other sorts of lesser Cloathes to be allowed to a short Cloth; that is to say, every Stranger shall pay for every short Cloth cont in length not above 28 yards, and in weight not above 64 l. white or coloured by him to be shipped or carried out of this Kingdom, Six shillings eight peace, besides the old duty of one shilling and two pence.

And so after that rate for all other sorts of Clothes of greater length and weight; and for all forts of leffer Clothes to be allowed to a short Cloth: That is to

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Dorset and Somerset Dozens, Rudge masht, Cardinals, Pin-mbites, Straites, Statutes Stockbridge, Tavestock, seven of each fort shall be allowed to a short Cloth.

Tauntons, Bridgwaters, and Dunftars, the 5. not exceeding 641. in weight; Devon. Dozens containing 12 or 13 yards, in weight 131. Five to be allowed to a short Cloth.

Ordinary Penny-stones, or Forrest Whites cont' between 12 or 13 yards, and in weight 28 pounds, Shorting Penystones cont' 13 or 14 yards, and in weight 35 pounds unfreized, Four to be allowed to a short Cloth-

Narrow Yorksbire Kersies Whites and Reds cont', not above 17 or 18 yards, and in weight 22 pound. Hampsbire Ordinary Kersies, Newberry Whites, and other Kersies of like making cont' 24 yards, and in weight 28 1. Sorting Hampsbire Kersies cont' 28 pound, and in weight 32 pound; Three of them to make a short Cloth.

Northern Dozens, fingle forting Penystons cont', between 13 and 15 yards, and in weight 53 pound Frized, Two of them to make a short Cloth.

And

And the Northern Dozens double; one to be ac-

counted for a (hort Cloth.

All which shall go and be accounted for short Clothes, and shall pay after the rate of short Cloth before rated, and for over weight 2. farthings and one half the pound.

The New fort of Cloth, called the Spanish Cloth, otherwise Narrow List, Western Broad Cloth not exceeding 25 yards in length, and 43 pounds in weight, to be accounted two thirds of the short Cloth before rated.

And for every pound weight exceeding 43 pounds, two farthings and half a farthing the pound weight.

Cloth Rashes alias Cloth Serges emi? 30 yards weighing 40 pound, to be accounted two thirds of the short Cloth before rated.

And for every pound exceeding 40 pound weight, two farthings and half a farthing the pound weight.

And for any other fort of Woollen Cloth of the Old or New Drapery, and not mentioned in that Book, to pay two farthings and half a farthing the pound weight; And for any other fort of Woollen Cloth of the Old or New Drapery and not mentioned, is to pay 2 farthings and half a farthing for the Subfidy of every pound thereof.

CHAP. XIII.

Of Impositions Subsequent, Conditional, Tempozary, &c.

factures of France by Lex ta-

II. On Vinegar, Perry, Cider and Rape, Customes payable by Denizens and Strangers, and Logwood made importable.

III. On Ships that have not two Detes, and 16 Guns.

IV. On Salt, Beer, Cider, Perry, Vinegar, a further Duty.

V. Of the Duty called Coynage, and upon what impos'd; and the Temporary Imposition called the Aditional Duty.

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VI. Of Goods particular Imported by Aliens; And Rules for petty Customes and other matters relating to Duties.

VII. Of Aliens Customes on Fish and other Commodities, and rates upon the Same.

I. Of Impositions on the Manu- | VIII. Impositions on Forraign Liquors, and Rates on the fame .

> IX. Of Native Commodities, and such as were formerly probibited. may be transported, paying certain Duties.

> X. Beer, &c. Exported ; Skins. Leather, &c. Transportable, paying such Duties - Bulloign and Coyn onely excepted.

> XI. Of Spices Importable by any Nation.

> XII. Of Great and leffer Officers Fees, and of Goods not paying one pound Custome in or out, what Fees to be taken.

XIII. Voluntary Gifts from some esteemed no Bribes; and Rates about payment of Fees.

XIV. Of Allowances for Jury ,

"Here are feveral Duties imposed subsequent to the Subsequent Duties payable by the Book of Rates, and over and Impolitions to above the same; That is to say, on all Ships belonging the Act of to the French King's Subjects, which shall lade or un-Poundage, and lade any Goods in this Kingdome, or set on shore or the Book of take in any Passenger, to pay 10 s. per Tun; This was Rates. an Oliver for a Rewland, the French King having done us the like kindness, by imposing the value of 50 Solz 12 Car. 2. on every English Ship; this complyment lasts but 3 weeks longer then the French Kings; his remov'd, ours drops.

II, So

ThisCollected II. So likewise on Vinegar, Perry, Rape, Cider, and as the Tunnage Cider-eager imported from Forraign Parts per English. and Poundage shall answer Six pounds ten shillings per Tun; if by is directed. Strangers, then but fix pounds.

14 Car. 2. cap. 11. For Frand.

But if they shall Export, then Three pounds ten shillings per Tun shall be repaid to the English, and Four preventing of pounds fifteen shillings to be repaid to strangers.

14 Car. 2. cap. 11.

The Statute of Eliz, Cap. prohibiting the Importation of Logwood Repealed; and the same may be Imported paying 5 l. per Tun: and in case of Exportation, then to be repaid 4 l. per Tun.

III. The Parliament taking likewise again into confideration the encouragement of Trading in Ships of force, have imposed on all Goods and Merchandize Imported and Exported, from and to the Mediterranean Sea, beyond Malaga, in any Ship that hath not two Decks and 16 Pieces of Ordnance mounted, and two men to each Gun, to pay over and above the Rates imposed by the Book of Rates one per Cent'; This does 14 Car. 22. 11. not extend to Ships laden with Fifh, or half laden with Fish and other Commodities.

V. So likewise on Salt out of Scotland into England,

one half-penny per Gallon.

Again, There is imposed on Wines, Vinegar, Cider, and Beer, Ten shillings per Tun; and on Brandy and Strong Waters 20 s. per Tun. For the Coinage Duty, the moneys that arises on this Duty is to be paid at the Custome-House to the Collectors and other Officers, tobe by them kept apart from all other Moneys, and paid Quarterly into the Exchequer without Salary or Fee: The Goods are forfeitable for non-payment of this Duty; and the same is to be repaid if the Goods are transported within one year.

There is likewise an Imposition of 12 l. per Tun on Spanish Wines, and 8 l. per Tun on French Wines and Vinegar; but that is but temporary, and ends the 24th

of June, 1678.

22 Car. 2. Cap. 3.

18 Car. 2.

cap. 5.

VI. There

V I. There is also Duties payable by Aliens for Pr Ad of Goods Imported in Aliens Ships, commonly called Nav. 12 Car. Navigation Duties. So likewise all Goods of the growth, production or and the parti-

Manufacture of Muscovia or Russia, and also of Tur- cular Commokey:

cap. 18. Vide the Statutes. dities enumerated there.

Note. That in all cases where petty Custome inwards is payable, it is to be understood of the fourth part of the full Subfidy according to the rates and value in the Book of Rates before the 5. per Cent. is deducted.

Note, Wines of all forts Imported are to pay Aliens Duties.

Rule Vide the Table of Strangers Duties upon

Note, That the Nett Subfidy of Vinegar, Perry, Wines. Rape, Cyder, and Cyder-eager both in London and out Ports, is the same with the Subsidy of French Wines payable in London.

14 Car. 2. " Vide Table of French Wines

VII. So likewise there is a further Imposition called Aliens Custome for all Fish, Fish Oyl, Blubber, Whale- Ast of Navibone, or Whale-fins, not being caught in Vessels belong- gation, 12 Car. ing to Englishmen, are to pay double Strangers Cu- 2. cap. 18. flome.

So likewise Custome and Impost to be paid for seve- Act of Trade. ral forts of falted or dryed Fish not imported in Ships 15 Car. 2. cap. English built, or belonging to England, and not having 7. Vide Star. and the partibeen stifled and caught in such Ships. culars enumerated.

Upon which ACT, Note, That the 5. per Cent, isnot Rule, to be allowed out of the Petty Custome.

VIII. There is likewise an Excise or Impost upon 12 Car. 23,24 Forraign Liquors imported; That is to fay, Beer or 22 Car. 2.4. Ale 6 s. per Barrel; Cyder or Perry the Tun ten shiflings; Brandy or Strong Waters perfectly made 8 d. per Gallon.

If any of those Goods be landed before those Duties 15 Car. 2. be fully paid and Warrants figned, and without pre- cap. 11. buibe some fence. and

half.

IX. There is likewise Duties imposed on several Commodities Exported by several Acts of Parliament subsequent to the Act of Tunnage and Poundage.

Coals Transported in English Shipping and Navigation for his Majesties Plantations in lieu of all Custome, state of the pay onely for one Chaldron of New-Castle Measure 1 s. 8 d. For one Chaldron London Measure 1 s. Provided good Security be given for landing the said

Coales accordingly.

There are likewise several Native Commodities and Cattle prohibited by divers Acts of Parliament not to lage, 22 Car. 2. be Transported unless fold under such prices; but non obstante they may now be Exported; paying Custome according to the Book of Rates.

22, 23 Car. 2. X. There is likewise an Imposition on Beer, Ale and 20 Car. 2. 5. Mum to be Exported, to pay 1 s. per Tun and no more;
But this is but tempore for 6. years.

So likewise Leather of all forts, Sheep-skins, Calve-skins, Tanned or dressed, non obstants any former Law, paying for each hundred weight cont 112 l. weight one shilling and no more: This ends in the 25th, of March, 1675. and both of them to the end of the next

Sellions of Parliament after-

20 Car. 2. 5.

Likewise all sorts of Forraign Coyn or Bullion of Act for Trade Gold or Silver may be Exported without paying any Duty or Fee for the same, entry being first made in the Custome-House; the like for Diamonds, Pretious Stones;

Jewels, and Pearls of all forts.

place beyond Sea in English Ships, Mace, Nutmegs, Cynamon, Cloves, into England, Wales, Jersey, Guernsey, paying the Customes thereof. Provided before the lateral car. Earmers of the Customes of the quantity & quality they

Regis, 20 Dec. Farmers of the Customes of the quantity & quality they 1662. 26 Aug. intend to lade, with the name of the Vessel in which 1663. But see

14 Car. 2. concerning Customes. * Sir Francis Moor's Report, 224. Lord cobbam's Case. The like not long since adjudged in the Common Pleas (on a Special Verdict found at St Edmonds-Bury in Suffele) about Mich. 253 or Hill 25 & 26 Car. 2. they

they intend to import the fame, and procure a Licence under the hands of the faid Farmers or Commissioners. or any 3 of them for the Importing of the fame.

Note, If Goods are Wreck's, and the Lord feizes

them, yet they ought not to pay Custome. *

XII. Fees and Allowances due and payable to the Officers of his Majesties Customes and Subsidies in the Port of London, and the Members and Creeks thereunto belonging; That is to fay, to the Officers of the Petty Customes Outwards, Sublidy Outward; Petty Cuflomes Inwards, Subfidies Inwards, Great Customes, Clerks fees Inwards and Outwards, the Kings Waiters being in number Eighteen, the Register of the Kings Warrants, the Usher of the Custome-House, Gaugers of French Veffels, Chief Searcher, and his Majesties five Under-Searchers in the Port of London; and the two Searchers at Gravef-end, were all fet and entred in a Table; the same was settled by the Commons House of Parliament, and figued by the Right Honourable Sir Virtute enjug-Edward Turner now Lord Chief Baron of his Majesties dam Ordin, d Court of Exchequer, and then Speaker to the Commons Dom. Com. Sab-House of Parliament; at which time the Question being bati 17 Maij, put, That for all Goods not paying one pound Custome 14 Car. 2. Rein or out, there shall be but half Fees taken for all Cocquets, Warrants, Debentures, Transires or Certificates; It was Resolved in the affirmative.

XIII. Societies or Companies Trading in a joynt flock, and making but one fingle Entry, the Adventurers being many, the Table of Fees does not hinder : but the Officers and Waiters may receive such gratuity as the Company shall voluntarily give.

All Goods under the value of 51. in the Book of Rates paying Subfidy the fum of 5 s. or less, shall pass with-

out payment of Fee.

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English Merchants that shall land out of one Ship at one time (although the receipt of the Subfidy be diftributed into several Offices) shall not pay any more than for a fingle entry.

The Goods of Partnership to pass as if the propriety were in one fingle person,

Fift by English in English thipping or Veffels inwards or Outwards all along the Coast to pay no Fee.

Post Entries inward to pass without Fee under five thillings; if above five thillings and under forty thillings. then fix pence: but if the Custome to be paid exceed 40 s, then full Fees.

The Merchant shall pay for all Goods opening that

shall be short entred above 10's. Custome.

The Merchant shall pay for weighing of all Goods shall be short entred above 20 s. Custome.

The Merchant is not to be at any charge if duly Entred.

Tare and Tret. Cask, or Bale or Covering wherein goods are packed; the other is a confideration allowed in the weight for refelling the Goods.

XIV. There is likewise to be allowed to the Merthe first is the chants a certain abatement called Tare, for Goods and weight of the Merchandize, the which is reduced into a Table, and cannot be deviated from in any case within the Port of London, without special direction of the Commissioners or Farmers; or in their absence of the consent of the General Surveyors, and Surveyor of the Ware-house, or of two of them at the leaft, whereof the Surveyor of the Ware-house to be one; and in the Out-Ports not emptying and without the confent and advice of the Collector and Surveyor: or where there is no Surveyor, by the Collector himself, giving speedy notice to the Commissioners or Farmers of the reason of so doing.

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CHAP. XIV.

De Scavage, Package, Porterage, Ports, Members, Creeks, the Port of London, and places lawful to lade and unlade in.

I. Scavage what, where payable, and to whom.

II. Who pay the same, and bow regulated and governed.

III. Goods omitted in the Scavage Table of Rates , bow to

IV. of Package, bow govern'd,

and where payable. V. Where Strangers shall pay as

of old. VI. Of Packers , Water-fide Porters, what Duties Strangers are to pay for shipping out their

VIII of Ports, Members and

Creeks; what are meant and understood by them as in reference to action, lawful or unlawful.

VIII, The Several Ports, Members and Creeks in England and Wales.

IX. Of the Extent of Port of London.

X. of the several Keys, Wharfs, and other places lawful for landing of Goods.

XI, What Goods are excepted which may be shipped or landed . at other places.

I Clavage is an ancient Toll or Custom exacted by Maiors , Sheriffs , &c. of Merchant Strangers for Wares shewed or offered to sale within their precincts, which is prohibited by the Statute of 19 H. 7. cap. 8. in Charter of King Henry the Second to Canterbury, it is written Scewinga.

The City of London still retain the Custom, of which in an old printed Book of the Customs of London it is there mentioned, and how to be disposed; of which Custom, halfen del apperterneth to the Sherriffs, and the other hatfen bet to the holfys in whose houses the

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Merchants been lodged : And it is to wet that Scavage, is the thew by cause that Merchants theiven Customes ought to be taken oze that any which unto the Sheriffs Werchandizes of the there he fold, &c.

The Scavage that is taken confifts of two parts, that which is payable by Denizons, and that which is requi-22 H. 8. cap-8. red of Aliens: And that all persons subject to such Duties might not be imposed upon, there are Tables mentioning the particular Duties fet up and approved by the Lords Chancellor, Treasurer, President, Privy Seal, Steward, and two Juffices of the Kings Bench and Common Pleas; and by them subscribed, or any four of them at least: The which Duties are on Goods Inwards and Outwards.

III. Note. All Goods mentioned in the Table of Fer Order in K. Charles the Scavage, and not mentioned in the Table of Rates, shall bed by William pay after the rate of one penny in the pound, according First, Subfcrias they are expressed or valued in his Majestie's Book Lord Brihop of Rates, and all others not expressed therein shall pay of London , H. Earl of the same Rates according to the true value. Manchester,

Lord C. J. Brampston, and

Note. That all private Baulks 8 Inches square and Lord Littleton. upwards, are by the 23 Article annexed to the Book of Rates reputed Timber, and valued at 3d. the foot, 50 Foot making one Load, the value of which is 12 1. 6 d. and the Subfidy for one Load of one peny, or one half penny and half one farthing, out of which the s per Cent. is to be deducted.

> IX. There is likewise another Duty called Package, the which is likewise set and rated in a Table, and the which is taken of all the feveral Commodities therein mentioned.

> All Goods not mentioned in that Table are to pay for Package Duties after the rate of one peny in the pound, according as they are expressed or valued in his Majesties Book of Rates, and all others not expreffed

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preffed therein shall pay the same rate according to their

For every Entry in the Packer's Book for writing Bills to each entry outward as ufually they have done

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The Strangers are to pay the labouring Porters for making up their Goods at their own charge, as always they have done.

Strangers are likewise to pay the Water-side Porters - 103 ST. 12 belonging to the Package Office fuch Fees and Duties for Landing and Shipping their Goods, as they usually

have done within these 10 years,

The Packers Water-side Porters have Tables of Duties for landing of Strangers Goods, and for the mina ing out their Goods; and Goods not mentioned in the Table are to pay Portage Duties as other Goods do of like Bulk or condition therein expressed.

Port or locus Publicus are those places to Portugua pubwhich the Officers of the Customs are appropriated, licus non solum which contain and include all the Privileges mercibus exoneand guidance of all Members and Creeks thereunto fed ut naves ibt alloted.

V jure debito ac securitate frudnist Navigantes, quatenus innocuum iter & stationem quarunt. Hinc Pontus & Navalia Privilegio pacis publica gaudent. Arg. 1. Leg. 1. 9. flationem D. de flum, cap. 2. jur. Nautic. Suedy C. 1. S. 1: 4 H. 4. 20.

By Members are those places where anciently a Cuflomhouse hath been kept, and Officers or their Deputies attending and are lawful places of Exportationor Importation.

Greeks are places where commonly Officers are or have been placed by way of prevention, not out of duty or right of attendance, and are not lawful places of Exportation or Importation without particular Licence or fufferance from the Port or Member under which it is placed,

Ports.

Book 2

c accordant to their VIII. The feveral Ports and Members as now they Portus est conclusus locus quo account at the Custombouse, are; mtortantur Creeks. merces & ex-Members. Ports. ortantur 1.59. de verb. Sign. Gravefand. Alias Statio, London. Leigh.

Burnham. quòd ibi tutò raves stare pos-Malden. 2 West Mersey. fint, leg. 1. 9.13 D. de flum. East Mer fey. Brickley. 3. Colchester L Wivenhoe. S Maintree. Harwich. those places to Potester of Woodbridge 5 Oxford. Alborough. 2 Dunwick. Sowold. Walder fwick. Lestoffe. ST ROLL Blackney and Cley. ing free Could be Burnham. CWells. Hitcham. Crofs Keys. sid Stone ers orthen Deputies Spalding. -Toquid todoidadfoqua-Boldick. Wainfleet. Numby Chapel Bofton. Thetlethorp. Saltfleet.

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Ports.	Members.	dmoM Greeks. 19104
Hul.	Grimsby. Bridlington. Scarbourough.	— Gainthorpe.
New-Caftle.	Whithy. Stockton. Harthpoole. Sunderland. Sheilds.	Middlesborough.
		Seaton delaval. Blith nook.
Berwick. ——		Aylemouth. Warnewater. Holy Island. East Marches, containing the Coast of Nor- thumberland, bordering on Scotland.
Carliste.		West Marches, containing the Coast of Cumberland, bordering on Scot-land.
	Whitehaven.	- Sworkington, Ravinglus. Milnthorpe,

Ports. Members. and Greeks.

	[Lancaster.	SPyte of Fowdrey.
	Boulton.	- Swyrewater, Presson and Rible Water.
dies des	Liverpool.	Sankey Bridge. Fradham. South shoar of the River of Mersey to the Red Stones.
Chofter		Hilbree. Dawpoole. Nefton. Burtonhead. Baghill. Moftin.
	Aberconway	
	Bewmaris.	- SHoly-head. Amlogb.
	Carnarvan.	- Sulbelly.

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Ports.	Members.	Creeks.
ak S	Aberdouy	Aberustah.
Milford	Cardigan.	Newport. Fiscard.
in design	Pembroke.	Haverford West. Tenby. Carmarthen. Lanelthy. North Burrys.
Cardiffe. —	Swansey.	South Bourrys. Neath or Britton Ferry. Newton.
		Aberthaw. Penarth. Newport. Chepstow.
Glocester		River Severn from Bridge-North to King-Road.
Briftol.		- Sphill.
Bridgewater	- Minhead	

Playmouth

Ports.	Members.	Creeks.
	Padstow.	
	St. Ives.	
	Pensance.	
	Helford.	
		C Penrin.
Plymouth.	Falmouth. —	- Sconehouse. Truro.
	Fowey.	
Marie Carlo	Lowe.	
		Saltash. Scowsland.
	Ilfracomb.	
	Barnstable.	Sclovelly. Appledore. Biddiford.
		Tincomb.
Exeter. —	.].	Starcrofs.
		Beare and Seaton. Topsham.
		- ? Pouldram.
		Sydmouth. Lympson.
		Exmouth. Aylmouth.
	Dartmouth.	Saltcomb. Brixham, Torbay. Totnes.

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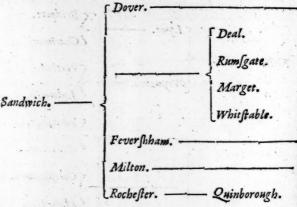
Ports.

Creeks. Members. Ports. Bridport. Lymé. Charmouth. Poole. CPortland. Weymouth. Lulworth. Swanidge. Wareham. Schriftchurch. Hinington. Southampton. (Yarmouth. Cowes. Newport. Emsworth. Port Smouth. SPagham Point. Arundell. LSelfey. Brighthempfton. Shorham. New Haven. Lewis, LSeaford. Chichefter. Pemfey. Hastings. Winchelfea. Lyd. Rye. Rumney.

Hyth.

Members. Ports.

Creeks.



Note. All the Ports and Havens in England are infra Corpus Comit', and that the Court of Admiralty cannot hold Jurisdiction of any thing done in them. Hollands Case, Earl of Exeter, 30 H. 6. And because he held Plea in the Admiralty of a thing done infra Portum de Hull, damages were recovered against him 2000 pounds. Vide Mich. 12 Jac. C. B. Greenway vers' Barber', Godbolt 260, 261.

Ad Portus in-Staurationem, quia publicæ fit, omnes Subditiloci conoper. pub. Portus intuitu fluminis quo ambitur, & velligalis quod

IX. In regard that the Port of London is of great concern as in relation to the Customs, the extent and limits of the same Port is by the Exchequer fettled, which utilitatis gratia is declared to extend and be accounted, from the Promontory or Point called North-Foreland in the Isle of ferre operas de- Thanet, and from thence Northward in a supposed line, bent. 1. 7. C. de to the opposite Promontory or Point called the Nase, beyond the Gunfleet upon the Coast of Esfex, and so continued Westward thorough the River of Thames, and the feveral Chanels, Streams, and Rivers falling into it,

ex Navium statione penditur , est publicus & bodie Regalibus accensitur. S. 2. Inft. de rer. dio. 1.4. S. de eod. c. un. quæ sunt Regal.

to London-Bridge, fave the usual and known right liberty and privilege to the Ports of Sandwich and Ip/wich, and either of them, and the known Members thereof, and of the Customers, Comptrollers, Searchers, and other Deputies of and within the faid Ports of Sandwich and Ipswich, and the several Creeks, Harbours, and Havens to them or either of them respectively belonging within the Counties of Kent or Effex.

X. And in regard that when Ships did come up to the Port of London, there used to be very great Frauds, committed by a promiscuous kind of shipping and landing of Goods and Merchandizes at feveral blind or unknown Wharfs and Keys, by reason of which his Majesty was often defeated of his Customs, it was povided that a Commission might issue forth out of the Exchequer to ascertain all fuch Wharfs, Keys, or other places as his Majesty by virtue of such Commission should appoint, in pursuance of which his Majesty hath been pleased to allow to be lawful Keys, Wharfs, and other places for the lading or landing of Goods:

Brewers Key. Chefter Key. Wool Dock. * Custombouse

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* Some Stairs on the West side thereof is declared not to be a place for shiping or landing of Goods.

Porters Key.

Bear Key.

+ Excluding the Stairs there, which are declared no lawful place for shiping, or + Sabbs Dock. J landing of Goods or Merchandize.

Wiggons Key. Youngs Key. Ralphs Key. * Dice Key.

The Stairs there declared unlawful for shipping or landing Goods or Merchandize,

Smart Key, † Somers Key, The Staires there declared no lawful place for shipping and landing of Goods and Merchandizes.

Lyon Key,
ButolphWharfe,
Hamons Key,
Gaunts Key.

The Staires on the East declared unlawful for shipping or landing of any Goods.

Cocks Key.

Fresh Wharfe, called part of Fresh Wharfe, the Staires are declared to be unlawful for shipping or landing of any Goods, &c.

Fresh Wharfe,

Billing Sgate.

To be a common open place for the landing or bringing in of Fish, Salt, Victuals, or Fuel of all forts, and all Native Materials for Building, and for Fruit (all manner of Grocery excepted,) and for carrying out of the same, and for no other Wares or Merchandize.

Bridgehouse in Southwark. May be allowed a place convenient for landing of any kind of Corn bought or provided for Provision or Victualling of the City of London, and not upon any private or particular perfons account, and for no other Goods or Merchandize.

XI. It may be lawful for any person to ship or lade into any Ship or Vossel on the River the Thames bound over

over Seas, Horses, Coals, Beer, Ordinary Stones for Building, Fish taken by any of his Majesties Subjects; Corn or Grain, the Duties being paid, and Cocquets, and other lawful Warrant duly passed for the same.

So likewise Deal Boards, Balks and all forts of Masts and Great Timber may be unshipt and laid on Land at any place between Lymehouse and Westminster, the Owner first paying or compounding for the Customs, and declaring at what place they will land them before he unships them, and upon Licence had and in the presence of an Officer they may unlade them; otherwise they incur a forseiture.

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and other lawful Wajnam daly pull So H. cwife W. Kards 9 BA H. 3 form

Fills taken by any of his select Subi Co :

1920vilions and Allowances made notivhit standing the several Clanks in the Acts for the Cultoms, and a

I. Customs to be paid for no more then is landed; and when Bulk Iball be broken.

II. Of Goods imported and exported, what of the Cultoms shall be repaid back, and by whom; and of the things requifite in the fame.

III. Of Agreement or Contract made or to be made for the importing and exporting by way of Composition ratified.

IV. What Allowances to be made to the Exporters of Wines. V. Of Exporting of Spanish Wooll;

where the same may be done. VI. Of Currans Exported what Allowances shall be made, and

to rebom, as well to Denizons as

Forreiners.

VII. Goods imported not finding Market after a year. Wine exported discharge of Custom.

VIII. What Allowances are to be made for Leakage.

IX. What shall be accounted Leak-

X. Wines proving unmerchantable, what allowances to be made.

XI. Tobaccos receiving detriment or damage in the Importation, what allowances to be

XII. Strangers paying double Subsidy, where they shall pay double Cuftom.

XIII. Of times and places law-

ful to unlade, and Officers Duties then attendent to be pre-

XIV. York , New-Caftle, and Hull men where Custom-free s and for what.

XV. Exeter and other Western men , what Free Subsidies shall be allowed ins

X VI. Woollen where new or old; what allowances shall be made in Custom or Subsidy.

XVII. Allowances of 5 in the Hundred for all other Goods.

XVIII. The Customers and other Officers Duties in reference to attend their several Duties in th: Cultoms.

XIX. Of Officers their Duies, and the punishments where made on complaint.

XX. The several Duties of London bow preserved.

XXI. The like for other Cities for those Duties granted or taken for publick good uf s.

XXII. Where Ships may be vifited, and the Officers duty relating to the same.

XXIII. Timber to be rated, and in what manner must pay.

XXIV. Prevention in Extersion of Customers and Officers, andon what pains and penalties.

XXV. Where Fees for Cocquets and Certificates shall be paid altogether, and wheae he shall detain

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Vestel has broke ground.

XVI. Where the Officers and ces shall be paid.
Customs shall allow and make XXVIII. Ships of War and other XXVI. Where the Officers and good to the Merchants the Algier Duty, and no other allowances, and no other Imposition or XXIX. Of Allowances to be made, Duty required by the Book of Rates Shall be required or baid. XXVII. If Goods shall bappen to Same bath.

detain bis own Cocquet till the | be taken by Enemies or Pyrats, or wreckt, and what allowan-

> privileged Vessels subject to Starch.

and of Shipping out leffer quantities then is contained in the Certificate, what operation the

I. L Very Merchant shall have free liberty to break Vide care 14. Bulk in any Port allowed by Law, and to pay what are law-Custom and Sublidy for no more then he shall enter ful places of and land: Provided that the Master or Purser of every fuch Ship shall first make declaration upon Oath before any two Principal Officers of the Port of the true contents of his Ships lading, and shall likewife after declare upon his Oath, before the Customer, Collector, Comptroler, Surveyor, or any two of them, at the next Port of this Kingdom where his Ship shall arrive, the Quantity and Quality of the Goods landed at the other Port where Bulk was first broken, and to whom they did

A Merchant brought 80 Tun of Bay Salt by Sea to Coke 12 part. a Port in England, and out of that ship fold 20 Tun, fol 17,18.

and discharged the same into another Ship then riding at the same Port: but the 20 Tun were never actually put on shoare, and for the rest being 60 Tun the Mafter agreed for the Customs, and put them on land; and although that that 20 Tun was always water-born and never were put on shohre, yet adjudged they ought to pay; the reason was, for the discharging them out of the Ship amounts as much as to the laying them on Land, the fame being done in Port; for otherwise the Fogaff's case, King would meerly be defrauded. But if a Ship is car - Plowden. ried in by storm, and to preserve the Vessel part is landed Com. fol. 9. before the Duty paid, yet will not subject the same to a forfeiture.

II. All Forein Goods and Merchandizes (except Wines, Currans, and wrought Silks) first Imported, shall be again Exported by any Merchant English with-

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in 12 moneths, and fuch Merchant and Merchants as shall export any fuch Forein Goods or Merchandizes (except as before is excepted) shall have allowance and be repaid by the Officer which received the fame. the one movety of the Sublidy, which was paid at the first importation of fuch Goods or Merchandizes, or any part thereof, fo as due proof be first made by Certificate from the Officers of the due entry and payment of the Custom and Sublidy of all fuch Forein Goods and Merchandizes inwards with the Oath of the Merchants importing the fame, affirming the truth thereof. and the name of his Majesties Searcher , or Under-Searcher in the Port of London, and of the Searcher of any other the out Ports, testifying the shipping thereof to be exported; after all which duly performed in manner before expressed, the movery of the Subsidy first paid inwards, shall without any delay or reward be repaid unto fuch Merchant or Merchants who do export fuch Goods and Merchandizes, within one moneth after demand thereof, as also the whole additional duty of Silk, Linen and Tobacco as before is directed.

If the Officer shall refuse to pay, (admitting there was no Relief had by way of complaint) whether the Merchant Exporter may not bring an Action against him upon the Debt created in Law, as he that hath a Tally may do.

III. And if there be any Agreement now in force, which was formerly made by the late Commissioners of the Customs and Subsidies, with the Merchants Strangers or their Factors, or shall hereafter be made by any Commissioners or Farmers of the Customs and Subsidies, or any other power (except by censent of Parliament) with any Merchant or Merchants Strangers or Factors for any Forein Goods and Merchandizes, to be brought into the Port of London, or any other Port or Haven of this Kingdom of England, or Principality of Wales, and to be exported again by way of Composition; all other Merchants being his Majesties Subjects shall be admitted into the same Composition,

14 H. 7.

polition, and not to be excluded from any other privilege whatfoever granted to the stranger by any private agreement or composition, under the same Condition and with the same Restriction as shall be made with the Merchant Stranger.

IV. Every Merchant (as well English as Stranger) that shall ship and export any kind of Wines which formerly have paid all the duties of Tunnage inwards, shall have paid and allowed unto them all the Duties of Tunnage paid inward, except to the Englishman 20 s. per Tun, and the Stranger 25 s. per Tun, upon due proof of the due Entry and payment of Tunnage inwards, and of the shipping thereof to be Exported to be made as above:

V. If any Merchant, Denizon, or Stranger shall Ex-12 Car. 2. caps port any Spanish or Forein Wooll, he shall have liberty 32. stoto do with this further condition, That such Spanish or 14 Car. 2. caps other Forein Woolls whatsoever be not Exported in any other Ship or Vessel whatsoever, with intent to be arrived beyond the Seas out of the Kingdom of England and Dominion of Wales, then only in English Shipping, won pain of consistation.

VI. Every Merchant (as well English as Stranger) which shall ship or Export any Currans, which formerly were duly entred and paid the Subsidy and Custom inwards, shall have allowed and repaid unto them respectively all the Custom and Subsidy paid inwards for the same, except 1 s. 6 d. for every Hundred weight to the English, and 1 s. 8 d. and one half peny for every Hundred weight to the Stranger, upon due proof of the due Entry and payment of the Custom and Subsidy thereof inwards, and of the Shipping thereof to be Exported to be made as in the second Article.

VII. If any Merchant having duly paid all Duties inwards for Forein Goods, and in regard of bad fales shall be enforced to keep the same or any part K k

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thereof in his hands after the space of a year shall be clapfed; in this cafe he or any other person is to be permitted to ship the same out for parts beyond the Seas) if they think fit) without payment for any Subfidy for the fame outwards, upon due proof that the fame was duly entred and Subfidy paid inward.

VIII. Every Merchant bringing in any fort of Wines into this Kingdom, by way of Merchandize, and shall make due Entries of the same in the Customhouse, shall be allowed 12 per Cent. for Leakage.

IX. Every Hogshead of Wine, which shall be run out and not full feven Inches, shall be accounted for outs, and the Merchant to pay no Subfidy for the fame.

Bovce ver as Cole fen. "" 27 Car. 2. in B. Z.

And by some it is conceived that no freight shall be paid for the fame, but the Merchant may fling them up to Cole jun. Hill the Master for Freight; but that should seem hard, for non constat any fault in the Master, but the same may be in the Cask, or in the ill flowing (the Mafter by cultome having no charge of the stowing of Wines, especially French, but the fame belongs to certain Officers beyond the Seas from whence they are imported.) Besides, the Goods (be they empty or full) take up Tunnage in his Ship, and should all the Wines a Shipboard have the same misfortune, it would feem hard; however, it is pity Opinion in this case should amount to a laudable Cuftom.

> X. If any Wines shall prove corrupt and unmerchantable, and fit for nothing but to distil into hot Waters or to make Vinegar, then every Owner of fuch Wines shall be abated in the Subsidy according to such his damages in those Wines by the discretion of the Collectors of the Customs, and one of the Principal Officers.

XI. If any Tobacco or other Goods or Merchandize brought e

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dizt ught brought into this Kingdom shall receive any damage by falt water or otherwise, so that the Owner thereof shall be prejudiced in the fale of fuch Goods, the principal Officers of the Customhouse, or any two of them, whereof the Collector for the time being to be one, shall have power to choose two indifferent Merchants experienced in the values of fuch Goods, who There is a upon visiting of such goods, shall certifie and declare upon Book at the their corporal Oaths first administred by the faid Officers, Custombouse; what damage fuch Goods have received, and are lessened in which there in their true value, and according to fuch damage in rela-is a general value fet on tion to the Rates fet on them in the Book of values, the all Goods, Officers are to make a proportionable abatement unto the amongst Merchant or Owner of the Subfidy due for the fame.

XII. All Merchant Strangers, who according to the rates and values fet in the general Book of Values and Nor can fuch Rates, and do pay double Sublidy for Lead, Tin, Merchants. Woollen Cloth, shall also pay double Custome for Na-their Goods tive Manufactures of Wooll; and the faid Strangers are before they topay for all other Goods as well inwards as outwards, have agreed rated to pay the Subfidy of Poundage, three pence in for the Curated to pay the Subidy of Foundage, three pener fromes, not-the pound, or any other Duty payable by Charta Mer-withstanding catoria, besides the Subsidy.

That the Merchants Trading into the Port of London have free liberty to lade and unlade their Goods at any lawful Keys and places of Thipping † and † Vide lib. 3. lading of Goods between the Tower of London, and Lon- 629.14. \$ 10. don-Bridge, and between Sun-rising and Sun-setting from the Tenth day of September, to the Tenth day of March; and between the hours of fix of the Clock in the Morning, and fix of the Clock in the Evening, from the Tenth day of March , to the Tenth of September , giving notice thereof to the respective Officers appointed to attend the lading and unlading of Goods; and fuch Officer as shall refuse upon due calling to be present. he shall forfeit for every default 3 1. the one moyery to the King, the other to the party aggrieved, he fuing for the fame.

which Tobacco is there valued:

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XIV. The Merchants of York, Kingston upon Hull, and New-Castle upon Tyne, and the Members thereof, shall be allowed free Custom and Subsidy for two of the Northern Clothes and Kersies in ten to be shipped in those Ports in the name of Double Wrappers, as formerly has been there allowed them.

X V. The Merchants of Exeter and other Western parts shall be allowed free of Subsidies for one Perpetana in Ten for a Wrapper, and three Devons Dozens in Twenty for Wrappers, the same to be shipped out of the Ports of Exeter, Plymouth, Dartmouth, Barnstable, Lyme Regis, or the Members thereof.

Note, That all XVI. All Merchants Transporting any fort of Woollen these several whether new or old Drapery, as also all Bayes and Cottons, allowances are not by Act shall be allowed one in ten for a Wrapper free of Custom of Parliament, and Subsidy.

but purely his Majefties gra- XVII. Every Merchant shall be allowed upon all-cious and vo-other Goods and Merchandize appointed to pay to any luntary gift and benignity the Subsidy of Poundage according to the Rate in the Book of Values, to be Imported, 5 in the Hundred of encouraging all the said Subsidies of Poundage so appointed to be the Merchants paid.

X V III. The Officers, who fit above in the Cuftom-house of the Port of London, shall attend the service of their several places from 9 to 12 of the Forenoon, and one Officer or one able Clerk shall attend with the Book in the Afternoon during such time as the Officers are appointed to wait at the Waters side, for the better deciding of all Controversies that may happen concerning Merchants Warrants. All other the Officers of the Out-Ports shall attend every day in the Customhouse of every respective Port for dispatch of Merchants and Ships, between the hours of 9 and 12, and 2 and 4 in the Afternoon.

XIX. Every Merchant making an Entry of Goods either

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either inwards or outwards, shall be dispatched in such Order as he cometh; and if any Officer or his Clerk shall either for favour or reward put any Merchant or his Servant duly attending and making his Entries as aforesaid, to draw any other Reward or Gratuity from him then is limited in the Act of Tunnage and Poundage, and the general Book of Values, if the Master Officer be found faulty herein, he shall upon complaint to the Chief Officers of the Customhouse be strictly admonished of his Duty; but if the Clerk be found faulty therein, he shall upon complaint to the said chief Officers be presently discharged of his Service, and not permitted to sit any more in the Customhouse.

XX. The Lord Maior, Commonalty, and Citizens of the City of London, their Officers or Deputies for and touching Offices of Package, Scavage, Baleage or Portage of any Goods or Merchandize of Aliens, or their Sons born within this Kingdom or unfreemen, Imported or Exported into or out of the City of London, or the Liberties or Ports thereof, unto or from the Ports beyond the Seas, for or concerning the receiving or taking of any Fee or Rates heretofore usually taken, for or in respect of the said Offices, or any of them might and may receive and take the same, any thing in the Act of Tunnage and Poundage, or any other Act or thing to the contrary notwithstanding.

XXI. All ancient Duties heretofore lawfully taken by any City or Town Corporate, their Farmers, Deputies or Officers, under the name of Town Cuftom or the like, for the maintenance of Bridges, Keyes, Harbours, Wharfs, or the like, shall and may be received and enjoyed as formerly, any thing in the said Act, or any other Act to the contrary in any wife non obstante.

XXII. The Under-Searcher or other Officers of Gravefend have power to vifit and fearch any Ship outward bound, but shall not without just and reasonable cause detain any Ship under colour of fearching the Kk3 Goods

Goods therein laden above 3. Tydes after her arrival at at Gravesend, under pain of loss of their Office, and rendring damage to the Merchant and Owner of the Ship, and the Searcher or Officer of the Customhouse in any of the out-Ports having power to search and visit any Ship outward bound, shall not without just and reasonable cause detain such Ship under colour of searching the Goods therein laden above one Tyde after the said Ship is sully laden and ready to set sail, under pain of loss of the Office of such offender, and rendring damage to the Merchant and Owner of the Ship.

XXIII. All Timber in balks which shall be of 8 inches square or upwards that shall be imported or brought from any part beyond the Seas into the Realm of England, Dominion of Wales, Port and Town of Berwick, or any of them, shall be rated according to the measure of Timber the foot square 3 d. for the value thereof, and according to that rate shall pay for Subsidy 12 d. in the pound according to Poundage; and all under eight inches square, and above 5 inches square, shall pay for Subsidy according to the Rates mentioned in the Book of Rates for middle Balks, and all of 5 inches square or under shall pay according to the rate of small Balkes.

XXIV. For avoiding of all oppressions by any the Officers of the Customs in any Port of this Kingdom, in exacting unreasonable Fees from the Merchant by reason of any Entries or otherwise touching the shiping or unshipping of any Goods, Wares or Merchandize, it is ordered, That no Officer, Clerk, or other belonging to any Customhouse whatsoever, shall exact, require, or receive any other or greater Fees of any Merchant or other whatsoever, then such as are or shall be established by the Commons in Parliament assembled; if any Officer or other offend contrary to this Order, he shall forfeit his Office and place, and be for ever after uncapable of any office in the Customhouse.

XXV. All Fees appointed to be paid unto the Cufton

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mer, Comperoler, Surveyor, or Surveyor General in the Port of London, for any Cocquets or Certificate outwards, shall be paid altogether in one sum to that Officer from whom the Merchant is to have his Cocquet or Certificate above in the Customhouse; and after the Merchant hath duly paid his Custom and Subsidy, and other duties above in the Customhouse, as is appointed above by the Book of Rates, he is to be master of and keep his own Cocquet or Certificate until he shall ship out his Goods so entred; when as he is to deliver the same to the Head Searcher, or his Majesties Under-Searcher in the Port of London or other Ports, together with the mark and number of his Goods.

XXVI. The Officers of the Customhouse for the time being shall allow and make unto all persons all such Moneys as are or shall be due unto them for the half Subsidy, and also the Algier Duty of Forein Goods for-

merly Exported now due and unpaid.

The Duties and Sums of Money appointed to be paid by the Act of Tonnage and Poundage passed this Parliament, and by the Book of Rates therein mentioned, and no other shall be paid to his Mejesties Officers during the continuance of the said Act upon Goods imported and exported, any Law, Statute, or Usage to the contrary notwithstanding. Nevertheless the duty of Prizage and Butlerage, and the duty of 12 d. of every Chaldron of Sea-Coal exported from Newcastle upon Tyne to any other Port or Ports of this Realm, shall be continued.

XXVII. If any Merchant Denizon born shall happen ²⁷ Ed. 3. cap. to have his Goods and Mercandize taken by Enemies or cap. 2. Pyrats at Sea, or perished in any Ship or Ships, the duties being either paid or agreed for, upon due proof thereof may ship out of the same Port the like quantity as shall amount unto the Custom, without paying of any thing for the same.

If the Importer shall pay ready money, he shall be allowed 10 per Cent. for so much as he shall pay down.

XXVIII. Ships of War may be entred and fearched 14 Car. 22 for prohibited and uncustomed Goods, and to bring cap. 11. them ashoar to the Kings Warhouses, and the ComKk 4 missioners

missioners or Head Officers may leave aboard Officers to look after him, that none be unladen or imbezelled, on pain of forseiture of 1000 l. And if Goods are concealed a shipboard after such time as the Ship is cleared, to forseit 100 l. and then any with a Writ of Assistance out of the Court of Exchequer to go in the day time to any place, and enter and seize.

Goods conveyed fecretly into Ships, and carried away without paying the Subfidy and Duties, the Owners and Proprieters forfeit the double value, except Goals, which only forfeit the double Custom and Duty.

XXIX. There are allowances to be given Merchants for defective and damag'd Goods of 5 per Cent. on all Goods imported, and 12 per Cent. on all Wines to be allowed upon Debentures; but if they shall ship out less then is in the Certificate, then the Goods there in mentioned, or the value thereof, shall be forseited, and the Owner or Merchant shall lose the benefit of receiving back any of the Subsidy: and Goods shipped out are not to be landed again in England on pain of forseiture of the Goods.

All Goods coming out of or carried in to Scotland by Land shall pass thorough Berwick or Carlisle, and pay

Customs as others, on pain of forfeiture.

And although that by this Act there are many allowances to be made, especially to Merchants Denizons, yet the Parliaments have ever been so careful as to bound the same, that is, it shall be to such who Traffick in Ships, (which are indeed the Bulwork of this sile;) and therefore it such Merchandize shall be Transported out in any Gally or Carrack, they are obliged to pay all manner of Customs, and all manner of Subsidies, as any Alien; but in regard that Herring and Fish are, and have been accounted one of the principal Commodities, and generally find a Vent or Market in those Kingdoms and Countries that usually imploy such fort of Vessels, those Commodities may be Transported in them as well as Ships from any Port or Harbour within this Realm, without paying any Subsidy or Poundage for the same;

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but then fuch Fish must be taken by the Natives of the Kingdom and Transported by them, otherwise to pay as Aliens.

And whereas all manner of Woollen Cloaths, as well white as coloured, unrowed, unbarbed, and unfhorne, and not fully dreffed, are prohibited by Law † to be † Per Letters Transported; His Majesty was graciously pleased to Patents beargrant unto Frances Countels of Portland, as well for her ing Date 24. Lamities which she hath suffered by the loss and Calamities which she hath suffered by the loss and Death of her nearest Relations in his Majesty and his Royal Fathers Service, sull power for one and thirty years to Licence the Transporting of such goods, Non obstante such prohibitory Laws, the which is now put in Execution by agreement and composition with her Deputies at the Customhouse.

CHAP.

CHAP. XVI.

Of the Right of Pallage: Of Impoling on the Persons and Goods of Strangers soz. Passage thozough the Seas.

I. Of the Right of harmless Utility excepted tacitly in the primitive dominion of things.

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II. Where Passage ought to be open, and where the same might be implicitly provided for in the sirst institution of Property, and under what Cautions.

III. Of the same right as in re-

ference to Goods and Merchandize.

IV. If Passage admitted, whether Tribute or Toll, may be imposed.

V. Where Imposition may lawfully be laid, and for what causes: And of the Kings Prerogative in that Point.

I. Aving in the foregoing Three Chapters observed fomewhat of Customs and Impositions laid de facto within the Realm, and that by Acts of Parliament, or the consent of the Three Estates, it may not seem amis to enquire what Imposition the King of his Prerogative may impose on Strangers and their Goods passing thorough his Territories and Seas; and in that to inquire of the same as in reference to Persons and Goods.

Beside the right of necessity, which seems to be excepted in the first Institution of Dominion, there is another Relique of old Communion, namely, the Right of harm
* De Offic. 1. less Utility: For why should not one (faith * Geero) when (without his own detriment he may) communicate to another in those things that are profitable to the Receiver, and to the Giver not chargeable. Therefore † De B.n.f. 4. Seneca † saith it cannot be called a benefit to give leave to another to light his Fire by yours. We read in Plutarch.

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tarch, It is not lawful to spoyl our Victuals when we have more then enough, not to stop nor hide a Fountain when we have drunk our fill, nor to abolish the Way marks either by Sea or Land which have been useful to us: So a River as a River is proper to that Prince, or that Lord, or that People, within whose Dominion or Royalty it runs, and they may make a Mill on it, (unless it be Common as a High-way) and may Leg. quadam take what Fish the River yields; but the same River D. de rer. dias a running Water remained common as to drinking or drawing of it, 'notwithstanding as to the Fishing and the like it may be peculiar.

II. Again, Lands, Rivers, nay if any part of the Sea be come into the Dominion or Property of any People, it ought to be open to those that have need of Paffage for just causes, namely, being expelled by force out of their own Country they feek void places, Bald. 3. conf. or because they desire Commerce with remote Nations. 293. The reason here is the same which hath been mentioned * elsewhere , because Dominion might be introdu-* Lib. I. cap. I. ced with a reception of fuch use † which profits these, + \$. 3. 84. and hurts not those, and therefore the Authors of Do- Servad. 3. An. minion are to be supposed willing rather to have it so, Litissque roge-then that such a restriction which perhaps in the end cujus vindicamay destroy Society: however this hath its quantum, tio, ait, Nulli for though harmles Passage may be excepted in the first possie nocere. Institution of Dominion; yet that is to be understood when leave is granted : and though fear of the multitude, which is to pass, cannot take away that Prince his Right Plutarch rethorough whose Territories or Seas they go; yet it follows lates, That as natural, that 'tis the Institution of such liberty that to aid the La-Prince or People may provide, and if they have any cedemonians, probable or any reasonable cause to interdict their passage led his Army

rinth: being reprehended by the Corinthians for not asking leave of the City, Nam & qui fores alienas pulsat, non intrare nisi domini permissu: at vos, inquit, Cleoneorum & Megarensium fores non pulsastis sed perfregistis, consentes omnia patere debere plus valentibus. However Passage is and must be requested; but in lieu of that, the striking of the Flagi, and lowring the Topsail, is in token of that Right due to His Majestie in the British Seas,

till fecurity or Hostages are pledged for their peaceable passage, nay without declaring their reason may interdict them absolutely any manner of passage, if there be any other way to pass in safety. And therefore at this day by the Laws of England, the King may interdict any Nation or People whatsoever to pass through his Seas without leave first obtained to that purpose, and may visit all Ships, be they of War or of Trassick, that shall occur or be in the same.

Vide lib. 1. chap. 4. Vide Mr. Selden's Mare

III. Nor is passage onely due to Persons but to Mer-Claufum. + That is by chandize also, for no man hath Right + willfully to obthe Laws of struct the way of Commerce to any Nation with any other Nature, but that is remote; because the permission of Trade is for the Laws of the interest of humane Society, and is not discommo-Nations and those of Coun-dious to any one: and to that purpose Philo speaks, tries may. * On the Sea all Ships of burden safely pass according to that * In Legat. right of Commerce, which is between all Nations arising Caium. from the desire of Natural Society, while they supply one Quomodo autem Satis digne quis another mutually with the one wanteth, and the other can explicet facili- spare; for envy bath never invaded either the whole world, or the greater parts thereof. And Plutarch speaking thus tatem ad mutua Commercia noof the Sea, This Element hath made our life sociable and bis datam ? Ne enim itine- perfect, that otherwise would be wilde and without correspondence; it supplys our wants with mutual aid, and by exris longitudo change of things needful it procures fellow ship and friendimpedimentum aliorum ad And the wisdom of God is highly to be admired, (hip. alios commeawho hath not granted all things to every Land, but hath tibus adferret distributed his gifts to several Countries, that men habreviorem viam, maris sci-ving need of one another might maintain Society for licet , ubique their Common good; therefore hath he endowed Man terrarum dispo-with knowledge and understanding to invent and build Ships, to govern and guide them by those Lamps of mundum tanquam domum

communiter inhabitantes crebro invicem inviferimus; & apud se nata quisque alteri communiter vicissim, commode acciperet res apud illum abundantes; ac se exiguam tenens terra partem, ita tanquam si teneret universam, frueretur ejus quæ urbis sunt bonis. Licet itaque; nunc tanquam in communi mensa convivarum unicuique ea quæ sibi apposita dare alteri longiùs accumbenti, ac contra que apud ipsum sunt accipere manu tantum

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Heaven, and other Instruments of his Divine Wisdom, enabling thereby the Merchant to convey to all what any place affords: according to that of the Poet,

What Nature any Land denyed, By Navigation is supplyed.

But as the Sea is free and open for Traders, yet nevertheless the Passengers are subject to such Restrictions, Laws and Ordinances as those Sovereign Princes shall make of force in those places where they have an accession of Property or Sovereignty.

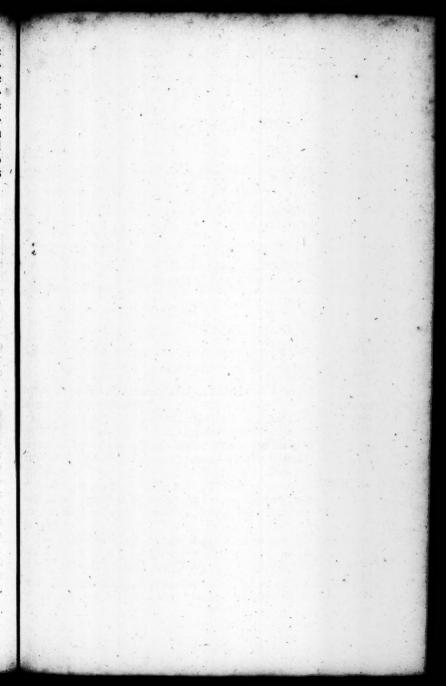
- IV. But admitting that fuch free Passage may be granted as above, whether Tribute may be imposed by him that Rules the Land upon Merchandize passing by Land or by River, or by part of the Sea, which may be called an Accession of the Land, (that is, the place thorough which they pass is as much under the absolute Jurisdiction of the Prince, as the very Land it self:) Certainly whatsoever Burdens have no relation to the Merchandize, no equity suffers the same to be imposed ride strabo. on the same; neither can Poll-money put on the Inhabi-lib.8.5 lib.16. tans to sustain the Charge of the Commonwealth, be exacted of Passengers.
- V. Nevertheles, if either to secure the Passengers Goods and Vessels from Pyrats and others, or for the Erecting of Beacons, Light-Houses, and other Sea-Marks, and such like, * there indeed some compensa-* 13 H.4. fol. tion may be laid upon the Commodities or Ships pass-14. sing thorough, so that the measure of the cause be not 1 Lib. 5. fol. 63 exceeded, or as my Lord Coke observes in the case of Case of the the Halage Money, † it be reasonnable; for upon that Chamberlain depends the Justness of Tributes and Toll: And upon of London. those Reasons the Venetian in the Hadriatick, the King Vide the Plea of Denmark in the Baltick Sea, do demand the same: of the Venetian And the King of England may do the like in the Chamberlain the end of bers of his Empire, and that by his Prerogative; for Mr. Selden's the same is not so much compulsory to any to pay, but to Mare Clausum. them that will take benefit of such accommodation.

Strabo

jure Fisci,

Pereg. 1. 1. de Strabo relates, That the Corinthians even from the most ancient of times received Tribute of the Commocap.1.num.27. dities, which (to avoid the Compassing of Malea) were carried by Land from Sea to Sea. So the Romans re-ceived a price for the passage of the Rhine. But this Right of impoling on Ships and Goods passing tho-rough some Territories is found cruel, especially when they must pass thorough the Territories of a powerful and sierce People, then it is heavy to the Merchant to compound, for it's often done on hard and grievous terms.

The End of the Second Book.



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CHAP. I.

Df Freedom, Bondage, Stavery, Exile, and Abiuration.

1. Of Freedom by the Law of Na-VII. Of a Servitude at this day, ture, and of Bondage, Slavery, flanding with the Laws of a Chrior Captivity introduced by the Law of Nations.

Man to Bondage:

III. Of the Dominion over Slaves, Bond-men. and Captives. IV. Of the Cause or Reason of ways.

fuch Dominion. V. That this Right or Dominion what operation it bath. was not a Law universal.

discontinued by the Christians and Mahometans.

Itian Common-wealth.

VIII. Of Manumission and Free-II. Of the Actions that Subject dom by the Hebrew and Roman Law, and by the Laws of England.

IX. of Disfranchifing the several

X. Of Abjuration and Exile; and

XI. Of Freedom in Cities and VI. Of Bondage or Slavery, where Corporations, in reference to Merchants, Traders, and Foreiners.

I. IN the primitive state of Nature no men were Ser- L. libertus \$ 1. vants ; yet it is not repugnant to natural Justice, that D. de statu bo-I vants; yet it is not repugnant to natural funce, that by the Fact of man, that is, by Covenant or Transgression, etiamservi li-Servitude should come in ; therefore Servitude is brought beri bamines in by the Laws of Nations. Captivitate de

II. Hence it is, That those that will yield up their jure Gentium. persons, or promise Servitude, are accounted Slaves; so cap.6. likewise all that are taken in Publick War, and brought Littleton sed. within the Guards of their Conquerors. Nor is trans- 175,1. Politims gression necessary, but the Lot of all is equal after the SI. D. de War is begun, even of those whose ill fortune subjected Captive them to be deprenhended within the Enemies Bounds; nor are they Servants only themselves, but all their Posterity for ever.

III. The Privileges of this Right or Dominion are L. Sfervorum infinite; since there is no suffering which may not be imposed § 1. D.de statu on such, nor work which may not every way be extorted from hominum. Apud genes, ait Caius, animadvertere possumus, dominis in servos vita necisque potestatem fuisse.

60. Instit. fo. 116. b. B. l. 1. D. de bis qui sui sunt juris institit. de bis qui sui-

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them. So that even the Cruelty of Masters became almost unpunished, till the Municipal Laws of Countrys fet Bounds to their rigour and power.

Nor are the persons become theirs only that have the power of them, but also all that they have; for fuch un-

Hence it was, That that excellent Law in favour of

happy persons can have nothing of their own.

Leg. Cornelia ff. de Testam. ff. de vule. Jubstit.

fuch was introduced by the Romans, called Legis Cornelia; & Leg. Cornel. which was when a Captive, intra presidia hostium, dyed in his Captivity; if he had made a Will, before his being taken Captive; yet fuch a Captive should in favour of fuch Will, and for the upholding of the fame, be feigned to be dead, and in puncto temporis, immediately before fuch In jure Politi- his being taken Captive; and fo by that Legal Fiction of minii Leg. re-death, his Will became firm and valid, as if hehad really dyed without ever being taken by the Enemy. So like bello. § 1. & 1. wife if one had been made a Slave; yet if he had retur-

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been absent, and was immediately redintigrated into his pristine Estate and Condition.

ter. & l. in bon.ff. de Capt. & & 4. D. qui- ned out of his Captivity, that for the preservation of his bus mod. jus patr. Solvit.

> IV. Now all these Priviledges and Immunities were introduced by the Laws of Nations, for no other reason , but that their Captors, tempted by fo many Immunities, mich willingly abstain from that cruel rigor of slaying their Prisoner.

> Right and Propriety, he was feigned as if he had never

Hence it is, That the Captors Dominion is extended to the Children; for should fuch use their highest Right, they a Deo kominis would not be born; but Children that are born before that calamity, and were never taken Prisoners, are freed

from that unhappy state.

V. Though this Dominion or Right was generally acquired in most Nations; yet was not the same a universal Law; for amongst the Jews, refuge was granted to Servants who fell into that calamity by no fault of their own. And the state of Christendome at this day is apparent, That Prisoners taken in War, do not become perfect Slaves, as of old; but only remain in the Custody of the Captor, till Ransoms are paid, whose valuations are generally at the pleasure of the Conqueror; yet persons 1673. for His of Eminent Quality, as Generals, and the like; fuch Majesties For-persons, * if taken by a common Souldier, yet he has no advantage

And Fortefeue conceives it began ab homine & pro vita introdu-Ha eft fervitus E. Sed libertas indita natura, quare ipfa ab tomine Jublata Jemper redire gliffit, ut facit omne quod libertate naturalis privatur. Cap. 42.

* Artic. of

war Anno

Of freedom, Bondage, Slavery, &c. 387

advantage by the same; for such a Captive is become Prisoner immediately to that Prince of State under whom the Captor served: But if it be the Lot of an Inferior Souldier to become a Prisoner of War, he is then become absolutely the Captors to dispose of; but he wanting Bart. in 1. name those necessaries in the Field for himself. which he ought & serv. D. de

those necessaries in the Field for himself, which he ought of serv. D. de to provide for his Prisoner, commonly waves that Interest, the generally yields him up as a Prisoner of War to be dif-

& generally yields him up as a Prisoner of War to be disposed of by that Prince or State under whom he served. VI. Slavery in Cristendome is now become absolute; and

in these later ages the minds of Princes and States having as it were univerfally agreed to effeem the words Slave. Bondman, or Villain , barbarous , and not to be used ; and that fuch as are taken in War between Christian Princes, In the Wars should not become Servants, nor be fold, or forced to work, of the French or otherwise subjected to such servile things; but remain till with the spaan exchange of Prisoners happen, or a Ransom paid, as a Horseman afore: Nay, the very Turks and Mahometans at this day was Ranfomed generally observe this among themselves, not to make for the 4th of Slaves of those of the Mahometan Religion, though taken in his yearly Pay. Vide Mariana. War; and that which is most to be admired, a Christian lib.27.18. And fallen into that miferable state, renouncing his Religion, in the last Beland becoming a Mahometan, immediately upon his Circum-gick War, the cision obtains his Freedom with a Recompence: The English dismist cilion obtains his Freedom with a Recompence.

Cruelty of those Insidels to those unhappy Persons, together that were with the reward of renouncing, hath given cause to many a taken in War. brave Person to become Renegado; the which being consi- as they did the dered by the Parliament in England, the made a * provision like with those for fuch miserable Persons as should be taken by Turkish of England An. 1671 and 2. and Moorish Pyrats. Quam non sit

ardua vertus servitium fugisse manuit is none of the hardest Vertues to embrace Death to avoid Slavery. * 16, 17. Car. 2. cap. 24. It's expired; but His Majesty is yet graciously pleased consider the state of his poor Subjects, and thereupon hath appointed a Committee of the Lords of the Privy Council for the managing of that

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VII. Though Slavery and Bondage are now become dif- Yet some of the English continued in most parts of Christendome; yet there may Merchants & be a Servitude which may amount to a labour or suffering ones, at the equal to that of Captives, the which may be justifiable; Canaries, do for men either through Povery, and the † like, may ob here support they themselves by Contract for maintenance to a Servitude Custom. So

likewise at Virginia, and other Plantations.

that's

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this day there is no Contract of the Ancestor can oblige his Posterity to an Hereditary Service; nor can such as accept

Exo.1.21.26, 27.

those Servants, exercise the ancient Right or Dominion over them, no nor fo much as to use an extraordinary rigour, without subjecting themselves to the Law: If an Eye or a Tooth had been struck out injuriously, by the Hebrew Law Freedom was immediately due; and by the Greeks, if Servants had been ill treated, it was lawful for them to demand a Sale of themselves to others. At Rome the Statues became Sanctuaries for Servants to implore the help of the Governours, against rigour, hunger, or any other intollerable injury inflicted by their Masters; and even in London at this day Servitude amongst the many Causes, as not Incolment of the Indentures, Vide the Sta- not Instructing in the Art, want of necessaries, infra tute of 5 Eliz. atatem 14, &c. Cruelty, Hunger, Rigour, immoderate

ther places.

who hath pro-Correction, and the like, are Causes sufficient on a remedy in o-Monstrans or Petition to the Lord Mayor and Aldermen. to dissolve the Contract, though under Hand and Seal, and to Decree all, or part of the Dowry, or some given (if any) to the Servant; and if cruelty hath been in the case, to expose the Master to answer damage to the Party Servant. VIII. Ulpianus observes after, that by the Laws of

Deut. 15. 13. The Ruffians their own by Conquest, thereon they which is in their Lan-

17. 5 8.

Nations Servitude came in, then followed the benefit of having leized Manumission. By the Hebrew Law, after the expiration on the Coun- of the time agreed on the Servant was to be manumittrey of Illiria, ted, and that not without Gifts, like Londons Freedom; and made it by the Custom of which the Master is always at the charge of Cloathing, and discharging the Chamberlains Fees. their Victory By the Roman Law every Son was in fuch subjection to pleased them his Father, that before he could be released of this subto highly, that jection, and made Free, he should by an Imaginary Sale be called them- fold Three times by his natural Father to another man, who Islves by a new was called by the Lawyers Pater Fiduciarius, that is, a Father Name . Slave, in Truft, and then be bought again by his natural Father, and fo manumifed by him, and then he became Free. This form guage Glorious; of fetting Free was by them called Emancipatio, freeDom. but in after time, (that warmer Climate having thawed their Northern hardness, and not ripened their Wits) when they were conquered, the Italians in derihon calling them (being then their Bond-men) Slaves. Sir Walter Rawleigh, lik. 2. cap.

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That Roman Darling was to be obtained Three ways: Vide leg. 12. 1. By Birth, * both, or at least one of their Parents Tabuli Sigonus de jure Roman. being Free; and fuch were called Cives Originarii. 1.1. cap. 10. 2. By Gift and Co-optation , when the Freedom was Jultin, Int.

bestowed on any Stranger or Nation, and they were 1.1. 11t. de Intermed Civitate Donati: And fo we read, that Cafar took genis vide Franc. Silo in in whole Nations into the Freedom.

Catilin. art. 4. Laftly, By Manumission, which was thus; when as the

Servant was prefented by his Master before the Conful or Pretor, the Mafter laying his hand upon his Servants head, used this form of words, hunc liberum esse volo; and with that turning his Servant round, and giving him a Cuff on the Ear, he did emittere fervum è manu: The Prator laying then a certain Wand, or Rod, called vinditta; upon the Goodwin An-Servants head, replyed in this manner, Dico eum liberum tiq. Rom. 4. effe more Queritur; then the Lictor or Serjeant taking 33, 34. the Wand, did strike the Servant on the head, and with his hand he struck him on the face, and gave him a push on the pack; and after this he was Registred for a Freeman: This being performed, the Servant having his head shaven purposely at that time, received a Cap as a Token of Liberty.

Tertullian observes, That at this time of their Manu-Tertullian de mission the Servants received from their Masters arefur. Carn. White Garment, a Gold Ring, and a new Name added

to their former.

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By the Laws of England every Subject Born within Magna Charta the Kings Dominions is a Freeman of this Realm, as ap-cap. 14. pears by the Grand Charter, cap. 14. yea, though he be a * As to some Bond-Slave to a Subject. * But a Stranger Born is no things V.de Freeman till the King have made him a Denizon, in whose postea § 9. Power alone, without the help of any other, one may be made Free.

To be a Freeman of the Realm, the place of Birth is held more considerable than the Quality of the Person: Yet by the opinion of Huffey Chief Justice, in 1 R.3. fo. 4. 1 R.3. fo.4. And in Calvins Case of the Post nati it is held for Law, That if Embassadors of this Realm have Children Born in France, or elfe where; the Father and Mother being Natural Born Subjects, the Children are Free of the Realm of England, But if either the Father or the Mother of Aaa 3

Di Freedom, Bondage, Slavery. &c.

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fuch children were an alien, then are not those children free. But the Law is conceived to be otherwise at this day. The Statute de Natis ultra mare, 25. E. 3. cap. clares, the Issue Born of an English-man, upon an Englishwoman, shall be a Denizon; for upon the Construction of this Statute, it has been adjudged more than once, That if an English-man marry a Foreiner, and has Issue by her Born beyond Seas, the Iffue is a Natural Born Subject.

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Bacons Cafe, 1 Cro. 4. fo. 437. Stephens Cafe 2 Car. in the Dutchy.

IX. Disfranchising by the Romans, called Capitis diminutio, was Three fold, Maxima, Media, & Minima; the least degree was, when then Cenfors pulled a Man from a higher Tribe down to a lower, and less Honourable; or when by any Censure, they disabled a man from suffraging or giving his Voice in the publick Affemblies; fuch as were thus in the last manner punished, were termed Ærarii, and in ararios veluti, quia omnia alia jura Civium Romanorum

Artic.l.3.c.17. praterquam tributi & aris conferendi amiserunt. Gellim relates, That P. Scipio Nascica, and M. Pompilius, being Cenfors taking a view of the Roman Knights, observed one of them to be mounted on a lean flarvling Horse, himself being exceeding fat; whereupon they demanded the Refon why his Horse was so lean, himself being so fat? his Answer was, Quoriam ego, inquit, me curro, statius mens seron.

First granted 17 Fob. Reg. revived 9 H. 3. and fince confirmed above 30 times.

By the Ancient Laws of England, and by the Great Charter, no Freeman shall be taken or Imprisoned, but by the Lawful Judgement of his Peers (that is, by Jury, Peers for Peers, ordinary Juries for others who are their Peers) or by the Law of the Land; which is always understood by due process of the Law, and not the Law of the Land generally; for otherwife that would comprehend Bond-men, (whom we call Villains) who are excluded by the word Liber; for fuch Bond-men might be Imprisoned at the pleasure of his Lord; but a Free-man neither could, nor can, without a just Cause; nor does the Priviledge extend to private Actions, or Suits between Subject and Subject; but even between the Sovereign and the Subject : Hence it is, that if a Peer of the Realm be Arraigned at the Suit of the King for a Murder, he shall be tryed by his * Peers , that is, by the Nobles But if he be appealed of Murder upon the profecution of a Subject, his Tryal shall be by an ordinary Jury of 12 Free holders

* The Lord Morley and Monteagles Case; for the fupposed Murder of one Haltings , 15 Car. 2. 10 E. 4. 6. 33

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holders; and as the Grand Charter did, and does protest H.n. 8. Bro. the Persons of Free-men; fo likewise their Free hold :title Tryals. For by the same Charter it is declared, That the King, or His Ministers, shall out no man out of his Free-hold, without reasonable Judgment; and so it was rul'd upon a Petition in Parliament, fetting forth, that a Writ under the Privy Seal went to the Guardian of the Great Seal, to caufe Lands to be feized into the Kings Hands, and that thereupon a Writ issued forth to the Escheater, to seize against the form of the Great Charter; upon debate of which, the Party had Judgment to be restored: the greatest, and most Explanatory Act, which succeeded in point of Con- 8 Ed. 3. Rot. firmation, was that of Edward the 3d. the words are, Parl. m. 7. That no man, of what effate-og condition foever he be, 28 E.3. Cap.3. hall be put out of the Lands and Tenements noz taken or imprisoned, nor disinherited, nor put to death, without he be brought to answer by one Process of Law, that is, by the Common Law.

2. Diminutio media, was an Exilement out of the City, without the lofs of ones Freedom; the words of the Judgment or Sentence were, Tibi aqua & igni interdico.

3. Diminutio maxima, was the loss both of the City, and the Freedom, and by his Judgment or Sentence was ediffum quamobliged and limited to one peculiar Countrey; all other minaxq; places in general being for bidden him.

There was a Fourth kind of Banishment, Disfranchising, pane nomine called relegatio; which was the Exilement only for a feafon, as that of Ovid's. *

The Laws of England in this matter have some refem-in illo. Ovid.de blance with those of the Romans; for Bratton observes 4 Trift.li.2.Elig. Distinctions.

1. Specialis, hoc est interdictio talis Provincia, Civitatis, by exhibiting Burgi, aut Villa.

2. Generalis, Interdictio totius Regni, & aliquando est. on in the

3. Temporaria, pro duobus, tribus, quatuor, aut plu-name of the ribus annis, aut, &c.

4. Perpetua, pro termino vitæ, & exilium est aliquando Mayors Court ex arbitrio principis, sicut in exiliando Duces Hertfordiæ & there against Norfolciæ, per Regem Richardum Secundian, & aliquando any Citizen per Judicium Terra, ut fit in Casu Piers de Gaviston, & that shall justctiam in Casu Hugonis de le Spencer Junioris, qui ambo ly deservé so Aaa 4

* Adde quod Atamen in

lene fuit: Quippe relegatus. non exul, dicor In London the fame is done an Informati-

common Ser-

fuerunt nour.

Petition pl. 2.

fuerunt exilit' per Judicium in Parliamento. So likewise * 17 Car. 2. was that of the Banishment of the Earl of Clarendon, who cap. 2.

dyed beyond the Seas. *

Mr. Selden ob-X. Abjuration was also a legal Exile by the Judgment ferves, That of the Common Law, as also by the Statute Law; and in in the time of the Statute of Westm. the second, cap. 35. He which Ravishes King Henry the First, and a Ward, and cannot render the Ward unmarried, or of other Kings, the value of her Marriage, must abjure the Realm; and both before this is a General Exile. And by the Statute made 31 Ed. 1. and after him, Butchers are to be abjured the Town, if they offend the that if any Fourth time in felling meafled Flesh; and this is a Special man accused of a Capital Banishment.

Crime done at Sea, being publickly called Five times by the Voice of the Cryer, after fo many feveral days assigned, did not make his appearance in the Court of Admiralty, he was Banished out of England, & de mere appurtenant au Rey d'Angleterre, for 40

years more or less, according to his offence. Mar. Clauf. fo. 12.

A man Exil'd, does forfeit these things.

1. He loseth thereby the Freedom and Liberty of the

Nation out of which he is Exiled.

2. He forfeits his freedom in the Burrough or City where he was free; for he which forfeits the Freedom of the whole Realm, forfeits his Freedom in every part.

3. The Law accounts him as one dead; for his Heir 34 E.1.1 H.4. Bulftrod. 3. may enter, and fo may his Wife enter into her own Lands. part, 188.

and may fue and Action as a Feme fole.

4. He shall forfeit those Lands which he shall purchase 15 E.3. Fitzb. in the Realm during his Banishment; for he during his Banishment is as much disabled to purchase as an Alien; for fit aliegena by his Banishment; and he is observed to be in a worse Condition than an Alien; for he is marked with Indignatio principis. Tis true, he cannot forfeit neither Title of Honour, nor Knighthood, nor the Lands he had before Exile, unless there be special Sentence or Judgment; as that of the Spencers.

If the Father be in Exile, this hinders not the Freedom of the Son; for the fame is not a thing descendable; for should it be for then the Banishmens of the Father would make a Forfeiture of the Freedom; but the Son has this Freedom by his own Birth as a Purchase, and not by the death of his Father by descent. Like the Case where F.S.

Of Freedom, Bondage, Slavery, &c. hath many Children, and then he confesseth himself a Villain to J.D. in Court of Record; yet his Children formerly Born are Free-men, and no Villains; the Reason is, because they were Free by their own Births; but

Heir by descent. XI. A Free-man of a City or Burrough may be made

the Inheritance is inthralled, because it is to come to the

divers ways, as my Lord Coke observes.

1. By Service.

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2. By Birth, by being the Son of a Free-man.

3. By Purchase or Redemption.

At Bristol by Marriage.

Sir John Davies in his Irif Reports observes the same Fol. 12. for Law. St. Paul was born at Tarsus in Cicilia, which was under the obedience of the Romans, by vertue of which he callenged the privilege of a Roman Citizen; but it was accounted no more than a National Freedom: like that of Calvin, who claimed the general Freedom of an English-man, being born in Scotland. But under the obedience of the King of England. But that Challenge made not St. Paul Free of the Private Customs, Privileges, and Franchifes of Rome, no more than Calvins Birth made him Free Citizen of London, to the particular

The King, by his Letters Patents, cannot make one a King Edward Free-man of London; † yet he may thereby make him the 3d. gran-

a Free-man of his Kingdom.

Customs of that City.

di sont vam bilandi Falcount de

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Confirme

8 Rep. fo. 126.

Case City of

Luca an Apothecary of the City of London, quod ipse omnibus libertatibus, quas Cives Civitatis prædicti habent in eadem Civitate alibi insra Regnum Angl' nostrum babeat, gaudeat, Sutatur, &c. Rot. Pat. 32 E. 3. in the Tower; yet it was held, That this Grant did not make him Free-man of the City, for it cannot be attained but by one of those ways. + Case of the City of London, Co. 8. Report.

If one be Born in a City, of Parents that are not Free, the Child hereby is no Citizen by Birth; and if one be born of Free Parents out of the place of Privileges, as London, &c. he yet is a Free-man by Birth; yet in the Charter Granted to Yarmouth the words were, Concessimus Burgensibus de magna Yarmutha de Villa pradicta Oriundis, that they should have such and such Liberties: So that Special words may alter the Cafe.

London had many Royal Franchises granted them from time to time, and were often by former Kings fuccessively

confirmed

Of Freedom, Bondage, Slavery, &c.

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Confirmed by confirmed, nor wanted they a share when the great CharMagna Charta ter was granted, to have their ancient liberties secured,
cap. 9.
Rott. Parl.
7. R. num. 37. and confirmations; but especially Richard the Second, who

in Parliament granted and confirmed to them all their ancient customes and liberties, with this clause, Licetusi non fuerint vel abusi fuerint; and notwithstanding any Sta-

9 E.2. cap. 2. tute to the contrary, amongst the number of their many 29 E.3. cap. 2. Priviledges, the freedom of the same was accounted of 27 E.3. cap. 11. no small importance, since in divers Parliaments it was 7 H. 4. cap. 1. very much aimed at, and endeavoured to be impaired;

9 H. 4. this Act is not printed.

but at last they obtained a most gracious and Royal Confirmation in Parliament of their ancient liberties, amongst which it is declared that no Merchant, being a Stranger to the Liberty of the faid City, should fell any Commodities within the Liberty of the faid City to other Merchant-ftrangers; nor that fuch Merchant-ftranger should buy of any other Merchant-ftranger fuch Merchandize. within the Liberty of the faid City, without forfeiture thereof ? faving that any Person, Lord, Knight, Gr. may buy within the Liberties of any Merchant-ftranger Merchandizes in gross for their own use, so that they do not fell them again to any other. And as this City by Custom may preclude any Person not being free of the fame, to fell in fuch manner upon fuch pain; fo any other City, which are Burroughs or Cities by prescription within this Realm, may have the like Cuftom, and the goods fold or bought by fuch, may be subjected to forfeiture, but the fame cannot be good by Charter or Grant.

A complete Free-man is fuch a one as hath challenged his freedom, and taken the Free-mans Oath, and is admitted into the Society and Fellowship of the Freemen, Citizens, and Burgesses, otherwise he hath but a bare right to his

freedom.

Fames Baggs , Co. 11. Rep.

CHAP. II.

Aliens, as in relation to their Ellates Real and Derfonal.

I. Of an Alien his ability and disability in the taking and enjoying of Estates real und personal.

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II. Of his capacity in purchafing, and disability to transfer by an bereditary descent.

III. Of the rules of descents, according to the Laws of several Countreys.

I V. Of descents according to the land lineal and collateral.

V. Of Impediments in one that is not medius anteceffor.

VI. Of impediments in one that is King to an Aliens Estate.

VII. Of the Statute of Natis ul-

tra mare, and of iffues born beyond the Seas.

VIII. The Lord Cokes opinion, that if an Allien bas iffue two Sons Denizons , the one purchases Lands and dyes, the other cannot inherit them, debated and refuted.

IX. Of Forein births, which do not create a disability.

rules of the Common Law of Eng-X. Of Aliens not dijabled by Law to bring either real or personal. actions.

XI. Of Office that must entitle the the medius antecessor lineal and XII. Of some particular immuninities and other matters relating to

N Alien is one born in a strange Countrey, under Calvins case. The obedience of a strange Prince of State, and out Co. lib. 7. of thee Legeance of the King of England, and can have no relverton 199. real or personal action for or concerning Lands; and therefore if he purchase Lands, Tenements, and Hereditaments to him and his Heirs, albeit he can have no Heir, yet he is of capacity to take a fee-simple, but not to hold, for the King upon Office found shall have it by his Prerogative.

So it is if he purchase Lands and dyes, the Law doth Lord Dyer 283.

cast the free-hold and inheritance upon the King.

But if he purchase or take a Lease for years of a House or Ware-house, which is for the accommodating him as a Merchant-stranger, whose Prince or State is in League with ours, there he may hold the fame, for that the fame is incident to Commerce.

And in that case if he departs and relinquishes the Realm, the King shall have the same; so it is, if he be no Mer-

chant.

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Pasca 29 Eliz. Sir James Crosts case by the Judges.

The like Law is if he takes a Lease of Meadows, Lands, Woods, or Pastures, the King shall have the same; for the Law provides him nothing but a babitation to trade

and traffique in as a Merchant.

II. Though he may take by purchase by his own Contrast, that which he cannot retain against the same, for the Law will not enable him by an Ast of its own to transfer by hereditary descent (the Alien dying, his issue a Denizon born) the Land will not descend, or to take by an Ast in Law, for the Law (Qua nihil facit frustra) will not give him an inheritance or free-hold by an Ast in Law, for he cannot keep it.

Therefore the Law will not give him

51. By Descent.
22. By Courtesie.
33. By Dower.
44. By Guardianship.

And in respect of that incapacity he ressembles a Person

Attaint , but with this difference.

The Law looks upon a Person attaint as one that it takes notice of, and therefore the eldest Son attainted over-living the Father, though he shall not take by descent in respect of his disability, yet he shall hinder the descent to the younger.

32. E. 3. Cozinag. 5: But if the eldest Son be an Alien the Law takes no notice of him, and therefore as he shall not take by descent, so he shall not impede the descent to the younger Brother: As for instance, if three Brothers, the eldest an Alien, the other two naturalized, and the middle Brother purchase, and dyes without issue, the younger Brother shall have the Lands.

govern our felves therein by the general notions of love or proximity of nature, but by the municipal Laws of the Countrey wherein the question ariseth; for the various Laws of divers Countreys have variously disposed the manner of descents, even in the same line and degree of proximity: For instance, the Father certainly is as near of kin to the Son, as the Son is to the Father, and is nearer in proximity than a Brother, and therefore shall be preferred as next of kin in administration to the Sons Estate.

3 Report Ratalifis Case.

According to the Jews, for want of iffue of the Son the Father

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Father succeeds, excluding the Brothers, and that hath Seldeni de sucbeen the use and construction of the Jewsh Doctors upon cessionibus apud Hebraus, c.20. numb. 27. 9. but the Mother was wholly excluded.

2. According to the provision of the Greeks for the fuccession or exclusion of the Father, is left doubtful.

2. By the Roman or Civil Law, according to the estimation of the twelve Tables, the Father succeeded in the purchase of the Son for want of issue of the Son, under the title preximit, agnato, and fo was the use; but my Lord Comment, on Littleton fo. 5. Coke supposes the contrary.

But taking the whole Institution of Justinian, the Son 8 vir. 1. de hadving without iffue, his Brothers, Sifters, Father or redibus ab in-Mother do fucceed him as well to Lands as Goods, in a kind teltato venien-

of Copercenary.

4. According to the Laws of Normandy, (which in some Customs Nor. things have a cognition with our Law) his Brothers are mand, c. depreferred before the Father (if the Son dye iffuelefs,) but scheancres. his Father before his Uncle.

5. According to the Laws of England the Son dying Sans issue, or Brothers, or Sisters, the Father cannot fuc-

ceed but it descends to the Uncle.

IV. There be two kinds of descents according to the Common Laws of this Realm.

1. Lineal, from the Father or Grand-father to Son or Grand-fon.

2. Collateral or transversed, as from Brother to Sister, Uncle to Nephew, and e converso: And both these again of two forts.

1. Immediate, as in lineals from Father to Son.

2. Mediate, as in lineals from Grand-father to Grand- Grotius de Fuchild, where the Father dying in the life time of the Grand-re belli ac Pafather, is the medium differens of the descent. Collateral cis, lib. 2. c .. 7.

as in lineal from Uncle to Nephew, or è converso.

And this mediate descent, or mediate Ancestor, though to many purposes it be immediate; for the Father dying in the life of the Grand-father, the Son fucceeds in point of descent in the Lands immediately to the Grand-father; and in a writ of Entry shall he supposed to be in by the Grand-father, and not in the post & cui.

This is called a mediate descent, because the Fathers is the medium through whom the Son derives his title to the

Grand-father.

In immediate descents there can be no impediment, but what arises in the parties themselves: For instance, the Father feized of Lands, the impediment that hinders the descent must be in the Father or Son, as if either of them attaint, or an Alien.

In mediate descents, a disability of being an Alien or Attaint, in him that is called the medius anteceffor, will difable a Person to take by descent, though he himself

have no fuch difability.

In lineal descents, if the Father be Attaint or an Alien, and hath iffue a Denizon born, and dye in the life time of the Grand-father, the Grand-father dyes feized, the Son

shall not take, but the Land shall escheat.

Dyer 274. Grayes.

Courtneyes c.

Com. Pleas

Michaelmas

Cozenage 5.

In Collateral descents A. and B. brothers, A. is an Alien or attaint, his iffue C. an Denizon born, B. purchases Lands and dyes without iffue, C. shall not inherit, because A. which was the medius antecessor or medium differens is uncapable.

V. But in any descents, the impediment in an Ancestor, that is not medius antecessor, from whom and to whom

will not impede the descent.

As for instance, the Grand-father and Grand-mother both Aliens, or attaint of Treason, have iffue, the Father Coron. fo. 141 a Denizon, who hath iffue the Son a natural born subject, the Father purchases Lands and dyes, the Son shall be Heir to the Father, notwithstanding the disability of the Grand-father, (and yet all the blood which the Father hath is derived from his disabled Parents) for they are not medii antecessores, between the Father and the Son, but paramount.

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The Law does not hinder, but that an Alien is of the same degree and relation of consanguinity, as natural born Subjects or Denizons born, the Son, Father and Brother though Aliens; the Son, Father and Brother our Law takes notice of as well as natural born Subjects: and fo it was 1 Car. Cro. 3. adjudged, for he shall be preferred in Administration,

fart, Caroons c. though an Alien, as next of Kin.

But in cases of Inheritance the Law takes no notice of him, and therefore as he shall not take by descent, so he shall not impede the descent to the younger Brother: As for instance, 32 Ed. 3. tit. A. an Alien, B. and C. naturalized by Act of Parliament, (bro(brothers) B. purchases Lands and dyes fine prote; C. shall inherit, and not A.

A. an Alien, B. and C. his Brothers both naturalized Ramseges 6. by Act of Parliament, B. purchases Lands and dyes with 15 Car. 2. out iffue, the same shall not come to A, nor to his iffue in Com. Banc. though a Denizon, but shall come to C. and his iffue; the Law taking no notice of A. as to impede the succession of C, or his iffue, though it work a consequential disability to bar the iffue of A. parallel to what the Law calls corruption of blood, which is a consequent of Attainder.

VI. Again in lineal descents, if there be a Grandfather natural born Subject, Father an Alien, Son natural born Subject, the Father is made Denizon, he shall not inherit the Grand-sather; and if the Father dyes in the life of the Grand-sather, the Grand-child, though born after the denization, doth not remove neither the personal nor consequential impediments or incapacity of the

Father.

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In collateral descents, the Father a natural born Subject Godfry and has iffue two Sons Aliens, who are both made Deni-Dixons case. zons, and dyes without iffue, the other shall not inhe-B.R. Godbott rite him.

A.an Alien marries an English woman, who is feized of Lands and has iffue, the Father and Mother dyes, yet the iffue may inherite the Mother, non obstante the inca-

pacity of the Father being an Alien.

VII. The Statue de Natis ultra Mare, declares the De Natis ultra issue born of an English-man upon an English-woman mare 25 Ed. 3. shall be a Denizon; yet the construction has been, though 2 Car. in the an English Merchant marry a Foreiner, and has issue Dutchy in by her born beyond the Seas, that issue is a natural born Stephens case. Subject.

But if an English-woman go beyond the Sea, and there 16 Car. 1 Cro. marry an Alien, and have iffue born beyond the Sea, that 437. Bacons

issue are Aliens.

If an English-woman marries an Alien beyond the Seas, of Kent. and than comes into England and has iffue, they are not Aliens, but may inherit.

My Lord Coke in his Commentaries on Littleton feems to be Com. lit. fo. & of opinion, that if an Alien has iffue two Sons born in England, one dying without iffue, the other shall not inherit

him

him. But the Law is otherwise taken at this day, as I conceive the reafons that have been given are,

Per L. C. I. Hale in Ram-Seys case.

1. Though the descent from one Brother to another Brother be a collateral descent, yet it is an immediate descent; and confequently if no difability or impediment can be found on them, no impediment in another Ancestor will hinder the descent between them.

That this is an immediate descent appears,

First, In point of pleading, one Brother shall derive himself as Heir to another without mentioning any

other Ancestor.

Secondly, According to the computation of degrees Brother and Brother make but one degree, and the Brother is distant from his Brother or Sister in the first degree of consanguinity and no more, by the Laws of England.

According to the Civil Law * Brother and Brother * fuft. 1.9.tit. make but one degree, for the Brother is in the second deconsanguinitagree from the Brother, yet both make but one degree. According to the Canon Law | Frater & Frater, or

+ Decret . Gratiani cap. 35. Frater & Soror, sunt in primo gradu.

And therefore the Laws prohibiting marriage between Kindred in the fourth degree, take Brother and Sister to be the first degree of the four.

Litt. fec. 20. 31 Ed. 3. Gard. 116. Holiands cause cited by Littleton. * Servien in

de gradibus

tis 28.

quæft. 5.

grees in Line Browns case

ration 47 which prefers immediate.

the Brother of the half bloud before the Mother.

The Laws of England in computation of the degrees of confanguinity agree with the Canon Law, and reckon the Brother and Brother to be the first degree.

Herewith agree the Customs of Normandy * which though in some cases differ from the Laws of England, yet herein and in divers other particulars touching def-Comptes, de- cents they agree.

Another evidence to prove that the descent between Collat. Solicak, Brothers is immediate is this, (viz.) the descent between Brothers differ from all other collateral descents what-Mic. 1656. 5. foever; for in other descents collateral the half blond does R. Contra 5 E. inherit, but in a descent between Brothers the half bloud 6. Bro. Admi-does impede the descent, which argues that the descent is

> The Uncle of the part of the Father has no more of the bloud of the Mother, than the Brother by the fecond venter; the Brother by the second venter has the immediate bloud of the Father with the Uncle, (viz. the Fa-

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thers Brother) has not but only as they meet in the Grand Father; the Brother of the half bloud is nearer of bloud then the Uncle, and therefore shall be preferred in Alni-

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It is apparent that if in the line between Brother and Brother the Law takes notice how the Father was the medium thereof, the Brother of the second venter should rather succeed the other Brother, because he is Heir to the Father. therefore in a descent between Brothers the Law respects only the immediate relation of the Brothers as Brothers, and not in respect of the Father, though it is true, the foundation of their confanguinity is in their Father or Mother.

Again, if the Father, in case of a descent between Brothers, were fuch an Ancestor as the Law lookd upon as the medium that derives the descent from the one Brother to the other, then the Attainder of the Fathers would hinder the descent between the Brothers: But the Attainder of the Fathers does not hinder the descent between the Brothers, the reason is, because the Father is not such a medium or nexus that is look'd upon by the Law, as the means deriving fuch a descent between the two Brothers: As for instance of three cases, two whereof evince the first proposition, (viz.)

That although the descent from one Brother to another Brother, though it be a Collateral descent, yet is and immediate descent, and that if no disability or impediment trifes in them, no impediment in another Ancestor will

The younger Brother has iffue, and is attainted of Trea- 10 Eliz. Dist Ion and dies, the elder Brother has title to a Petition of 274. Grays tight, dies sans iffue without a restitution, the younger brothers fon has loft that title; for though the title were in the Ancestor that was not attaint, yet his Father (that the medium whereby he must convey that title) was attaint, and so the descent was obstructed.

Henry Courtney had iffue Edward, and was attainted of Com. olseit. Co. Treason and died, Edward purchased Lands and died row of 241. without iffue, the Sisters and Heirs of Henry were disa-Henry Court-bled to inherit Edward; yet neither Edward nor his Aunts were attainted, or their Bloud corrupted: yet be-

cause Henry was the medium through whom the Aunts Bbb

mu?

must derive their pedigree and confanguinity to Edward, who was attainted, the descent was obstructed till a resti tution in blood.

But if the Grand-father of Edward had been attainted, and not Henry, this would not have hindred the descent from Edward to the Aunts, because that Attainder had been paramount to that confanguinity which was between Henry and his Sifter, and that is proved by this third cafe.

Mich. 40, 41. he Exchequer in the case of Hobby.

William Hobby had iffue Philip and Mary, and was at-Eliz. ruled in tainted of Treason and dyed, Philip purchases Lands, and dyed without iffue; it was adjudged in that case, that non obstante the Attainder of William Hobby, Mary should inherit, because the descent and pedigree between Philip and Mary was immediate, and the Law regards not the disability of the Father.

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If the Heir of the part of the Father be attaint, the Land shall escheat, and shall never descend to the Heir of the part of the Mother; but if the Son purchase Lands, and has no kindred of the part of the Father but an Alien it shall descend to the Heirs of the part of the Mother.

IX. Those that are born sub fide, legiantia, obedientia Domini Regis are not Aliens; and therefore those that were born in Galcopne, Normandy, Acquitaine, Co. 7. Ret. 21. Turnay, Callice, Oupan, whilft they were under the Dominion of the Kings of England, were natural born

Subjects, and not Aliens.

Scotland is a Kingdom by union, and therefore those that were born in Scotland under the allegiance of the King, as of his Kingdom of Scotland, before the Crown came united, were Aliens born, and fuch plea against such Persons was a good plea; but those that were born since the Crown of England descended to King James are not Aliens, for they were born sub fide legiantia Domini Regissio those that are born at this day in Attainia, Men England, Barbadoes, Jamaica, or any other of his Majesties Plantations and Dominions, are natural born Subjects, and not Aliens; fo likewife those that are bom, It

X. But if an Alien be made an Abbot, Prior, Bishop, or s a. Dean, by the plea of an Alien we shall not disable him to old

49 E. 3. 12. jer Tanke and Pershay.

Calvins cafe.

Sir John Burroughs Sovereignty of the Seas, ful. 102.

to bring any real or mixt action concerning the poffer fions that he hold in his politick capacity, because the Same is brought in auter droit.

Tho like Law is for an Executor or Administrator, be- Talce 31 Eliz

cause the recovery is to anothers use.

If an action is brought against an Alien, and there is Mich. 6 Fac. a Verdict and Judgment against him; yet he may bring a in C. B. Brownwrit of Error and be Plaintifthere, and that fuch plea is low 1. part 45. not good in that case.

Though an Alien may purchase and take that which Mich. 29 Eliz. be cannot keep nor retain, yet the Law hath provided a in C. B. Gold mean of enquiry before he can be devested of the same, 30 Eliz. Coke

for until Office be found the free-hold is in him.

5. part Pages And this Office, which is to gain to the King a Fee or case fol. 52. free-hold; must be under the Great Seal of England, for a Magre 43. Commission under the Exchequer Seal is not sufficient to Mashum Dree mitle the King to the Lands of an Alien born; for the 282. Alien, Commission is that which gives a title to the King, for be-Stamford Prefore that the King hath no title: but in cases of Treason rogative Regis there upon Attainder, the Lands are in the King without 6.18. 63.53. Office; and in that case, to inform the Court, a Com-zin, &c. mission may go out under the Exchequer Seal. Cross ve. Gay:

XI. If an Alien, and a Subject born, purchase Lands Cro.3. part fol, to them, and to their Heirs, they are joint tenants, and shall 123. on in Affize, and the Survivor shall hold place till Office Plond. Com.

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By the finding of this Office the party is out of possession, the fame be of Houses or Lands, or such things as do 17 E.3.fol. 10. by in livery; but of Rents, Common Advowfons, and Henry Hills other Inheritances incorporeal which lye in grant, the cale. Alien is not out of possession (be they appendant or in gross) therefore if an Information or an Action be brought for the fame, the party may traverse the Office are 29 Affize 30. or the King.

And if the King obtains not the possession within the 31,32. Affice var after the Office found, he cannot seize there without a stimfords ple. 1. 54. cap.80

cire facias.

It is not for the Honour of the King (an Alien purchabom ng of a Copyhold) to seize the same, for that the same p, or s a base tenure; and so it was adjudged where a Copym to sold was furrendred to J. S. in truff that one.

Hell and

23 Car.in B.R. Holland an Alien, should take the profits thereof to his Styles 20. King own use and benefit, upon, an Inquisition taken, it was adzerf. Holland. judged the fame was void and should be quashed, because the King cannot be intitled to the Copyhold Lands of an Alien, nor to the use of Copyhold Lands as the principal cafe was.

An Alien Infant under the Age of 21 years cannot be a Stat. 14 Car.2 Merchant Trader within this Realm, nor can he enter any cap.II. Goods in his own Name at the Customhouse.

14,15 H.8. cap.4.

If an Englishman shall go beyond the Seas, and shall there become a fworn Subject to any Forein Prince or State, he shall be look'd upon in the nature of an Alien, and shall pay such Impositions as Aliens; if he comes and lives in England again, he shall be restored to his Liberties.

Ao Alien is robbed, and then he makes his Executor Hill. 12 Fac. Bulftr. 3 part and dies, and afterwards the goods are waift, the Lord of f. 19. cited in the Franchife shall not have them, but the Executors. Vide Sir Tho. Wal-Stat. 13 E.4. ters cafe.

Telv.199. Turloote verf. B.R. Moore 481.

All Personal Actions he may fue, as on a Bond, so likewife for words; for the Common Law according to the Menjon, 8 Fac. Laws of Nations protects Trade and Traffick, and not to have the benefit of the Law in fuch cases is to deny Trade.

But yet Aliens and Denizons are restrained by the Stat. of & Elia. to use any Trade, not having served seven years as Apprentices within the Realm. Vide the Statute what Trades (Trin. 12 Car. 1.) at Serjeants Inn in Fleetstreet by all the Judges. Human Reportsf. 132.

CHAP

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CHAP. III.

Of Maturalization and Denization.

I. Whether the Kings of England can naturalize without Act of Parliament.

11. What operation Naturalization, hath as in reference to remove the difability arising from

themselves.

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III. What operation naturalization hathas in reference to remove defects arifing from a lineal or collateral Ancestor.

IV. A Kingdom Conquered, and united to the Crown of England, whether by granting them a power to make Laws, can implicitly create in them such a Sovereignty, as to impose on the Realm

of England.

V. Of Persons naturalized by a Kingdom dependent, whether capable of imposing on one that is ablute.

NI. Of Kingdoms obtained by conquest, how the Empire of the same is acquired, and how the Conque-

ror succeeds.

WII. Ireland, what condition it was accounted before the Con-

quest, as in reference to the Natives of the Jane, and whether by making it a Kingdom they can create a Foreiner as a natural born Subjest of England.

VIII. Of Aliens, as in reference to the transmission of their Goods & Chattels by the Liws of France.

IX. Of the Privileges the Kings of England of old claimed, in the Estites of Jews dying commorant here, and how the same at this day stands.

X. Of Persons torn in places annexed or claimed by the Crown of England how esteemed by the Laws of the same.

XI. Of Denization, and what operation it hath according to the

Laws of England.

XII. Where an Alin is capable of Dower by the Laws of England, and where not, and of the total incapacity of a Jew.

XIII. Whether a Denizon is capable of the creation and ret.ntion of Hongur, by the Laws of England.

I. The Father and the Mother are the fountain of the bloud natural, and as it is that that makes their life. Sons or Daughters, fo it is that that makes them Brothers and Sifters; but it is the civil qualifications of the bloud that makes them inheritable one to the other, and capable of enjoying the immunities and privileges of the Kingdom; but that is from another fountain, w.c., the Law of the Land, which finding them legitimate, doth transplant them into the Civil right of the Land, by an A? called Naturalization; which does superinduce B b b 3

and cloath that natural confanguinity with a civil hereditary quality, whereby they are enabled not only to inherit each other, but also to enjoy all the immunities and privileges that meer natural born Subjects may or can challenge.

Servienlib. 2. cap . 12.

II. According to the Laws of Normandy the Prince might naturalize; but fuch naturalization could not divest the descent already vested.

But according to our Law by no way but by Act of Parliament, and that cures the defect as if they had been born in England, and no man shall be received against

an Act of Parliament to fay the contrary.

Therefore if the Father an Alien has iffue a Son born bere, and then the Son is naturalized, the Son shall inherit.

Com. Lit. 129.

241.

If the Father a natural born Subject has iffue an Alien who is naturalized, the Father dyes, the Son shall inherit.

III. Naturalization does remove all that disability and incapacity which is in Aliens in respect of themselves, and fo puts them entirely in the condition as if they had

been born in England.

The Relative terms, as if born in England, is generally used to supply the personal defect of the parties naturalized, arising from their birth out of England; and therefore shall never be carried to a collateral purpose, nor cures a disease of another nature, as half bloud illegitimation, and the like; but all difeases, whether in the parties themselves, or resulting from the Ancestor, it cures.

Acts of Parliament of this nature may be so pen'd, as to cure defects in the Father or Ancestor, or in the parties

themselves.

If restitution in bloud be granted to the Son by Act of Parliament, this cures that disability that resulted from the Fathers Attainder, and that not only to the Son, but also to the collateral Heirs of the Father; the true reason of this is, because the corruption of the bloud by the Attain-Coke 3 Inf. co der is only of the blond of the Fasher, for the Sons blood or collateral Heir was not at all corrupted; for the scope of

> the Act in taking notice of the Fathers Attainder does intentionally provide against, and remove it, for otherwise the fame had been useless.

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But in naturalization without express words, it takes no notice of the defects in the Father or other Ancestor, nor removes them.

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And therefore fuch Acts of Parliament as take no other notice but of the Person naturalized's Forein birth, the fame cures not any disability of transmission hereditary between the Father, Brother, or any other Ancestor, refulting from the disability of them without attnativ naming of them. As for instance, the Father an Alien, the Son naturalized by Act of Parliament, the Father or any other Ancestor an Alien purchases Lands and dyes, the Son shall not take by reason of the disability in the Fathers. but there may be words inferted in the Act that may take away the impediment.

IV. They that are born in Ireland, and those that are born in Scotland, are all alike, for their birth are within the Kings Dominions, and they are born under the like fubjection and obedience to the King, and have the like bond of allegeance ad fidem Regis; yet if a Spaniard comes into Ireland, and by the Parliament is there naturalized, though perhaps this may qualifie and cloath him with the title of a natural born Subject of Ireland, yet it has been conceived that it will not make him a natural born Subject of England.

For the union of Ireland to that of England is different from that of Scotland; for the first is dependent, as a My Lord Coke Kingdom conquered, the later independent: Though fo conceives but Me. Selden Henry the II. after his Conquest of that Nation, did re-denyes that mit over from England the Ancient modus tenendi Parlia-ever therewas mentum, enabling them to hold Parliaments, which af-any fuch moter was confirmed by King John; yet that was by no other dus rementi, force then bare Letters Patents. Now when a Nation is an impois once conquered there remains no Law but that of sture. Fide his the Conqueror; and though he may incorporate fuch con-Titles of Hoquered Nations with his own, and grant unto them their nour, fol. 708. ancient Parliamentary wayes of making of Laws; yet the 710, 718, to Conqueror can no ways grant unto them a power by 721. vertue of fuch Grant or Confirmation, as to impose upon his own Country, for he himself before such Conquest could not make a natural born Subject without Act of Parliament, and most certainly his Conquest adds nothing to his power, though it doth increase his Dominion. Bbb 4

. Agrin,

ad fidem Regis, there the Acts of each other are reciprocate. and one naturalized by the Parliament of Scotland, is as naturalized in England, because Scotland is a Kingdom abso-Selden, Tit. of lute; but Ireland is a Kingdom dependent and subordinate Honour fol. to the Parliament of England, for the Parliament in Eng-213. in Scotland, the tit. is land can make an Act to bind Ireland, but not e converso. Carolus Scotie, Now to be a Native of Ireland is the fame as to be born in Anglia, Fran- Ireland, but that is by the Laws of Ireland : but to be born cia, & Hyberin Ireland, and to be the fame as to be born in England, must berniæ Rex; be by the Laws of England: But there is no Law that hath but in Ireland, Englia, Scotla, enabled them with fuch a power as to naturalize further then their own Laws extend; but the Law of Ireland does not extend in England, therefore Naturalization in Ireland, operates only in Ireland because of the sailure of power.

* From bence it is that the King at this day cannot a lien or fell Ireland without l'ament, for they whose 1 ght he fuceeds could Inflitut. fol. 357. nor can he grant Por-Tus Maris obedientiis, advocationibus, & patronationibus Eccle fiarum Metrotolitit'adralium Cancellar. Justiciar. nor Imperio, and

VI. Again, Kingdoms that are Conquered the Empire of the same may be acquired by the Conqueror, only as it is in a King, or other Governour, and then the Conqueror only fucceeds into his right, and no further *: or also as 'tis in the People, in which case the Conqueror an Act of Par-hath Empire, fo as that he may dispose of it, or alienate it as the People themselves might; for 'tis are thing to inquire of the thing, another of the manner of holding of it, the which are applicable not only to corporal things, but not do it; Co.4. incorporal alfo: For as a Field is a thing possessed, so is a passage, an Act, a way; but these things some hold by a tull right of property, others by a right of usufructuary, others by a temporary right. Again, by the will of the Conqueror the Kingdom or Republick that is fo conquered may cease to be a Kingdom, or Common-wealth, either fo that it may be an Accession of another Kingdom or Common-wealth, as the Roman carum & Cha- Provinces, or that it may no ways adhere to any Kingdom or Common-wealth; as if a King waging War at his own charge, fo conquer and subject a Peomero & mixto ple to himself, that he will have them governed, not for the profit of the People chiefly, but of the Governour, many more all which is a property of what we call Heril Empire, not which are in- of Civil; for Government is either for the profit of the leparably annexed a Kingdom. 4 Imperium aliud eft ob utilitatem eins qui regitur, boc in-

ter liberos losum kabet, illud inter Dominos & ferros. Arift. lit. 7. de Republica. Govert

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Governour, or for the utility of the Governed, this hath place among Free-men, that among Masters and Servants. The People then that are kept under fuch command will be always for the future not a Commonwealth, but a great Family; hence it is that we may plainly understand what kind of Empire is that which is mixt of Civil and Heril, that is, where Servitude is mixt and mingled with fome personal Liberty: For if the People are deprived of Arms, commanded to have no Iron, for Agriculture, to change their language, and course of life, and abstain from the use of many of their Customs, to be + Case of the confined to their own Houses, Castles, or Plantations, Earlof Shrewnot wander abroad, to be governed by fuch Laws as the sbury on the Conqueror should transmit to them *, all which are the Stat. of 28.H.S. tokens of a Nation by conquest made subordinate to the of Absentee, Conqueror, and are part Heril, and part Civil, and 4- Inft. prethough they may remain a Kingdom, and absolute within 354 themselves as to the making of Laws, to the obliging each *Or else they other, yet they can no ways impose on their Conqueror, came to Lonfor though that be true which in Quintilian is alledg-donfor them, ed on the behalf of the Thebanes, that, that only is the m. 17. Ariovi-Conquerors which he holds himfelf, but an Incorporeal fins apud Cafaright cannot be holden, and the condition of an Heir rem, juseffe and of a Conqueror is different, because the right paf-belli ait, ut qui feth to the former by the descent, but only the thing by vicissin is the last by virtue of the Conquest. But certainly that is quemadmodum no objection, for he that is mafter of the persons, is al-vellent impersfo master of the things, and of all right that does be-rent, de Bello long to the Persons, for he that is possessed, doth not Leg. qui in serpossess for himself, nor hath he any thing in his power visue est dereg. who hath not himself; and so it is if he leaves the right furis Leg. seof a Kingdom to a conquered People, he may take to venier D. ad . himself some things which were the Kingdoms, for it is beg. Fud, de, at his pleasure to appoint what measure he will to his Adult. own favour; from hence it is we may observe what fort

VII. Now Ireland before the same became united to the Calvins case Crown by the Conquest of Henry the II. the natives were lib. 7-fol. 23. meer Aliens, and out of the protection of the Laws of this Realm; yet when once they became a conquered People, and subject to the Crown of England, and united

of Empire that Kingdom is at this day.

scribes fol.

the Clergy

were elta-

blifhed and

ad fidem Regis there did arife their allegeance, but that union neither made them capable of the Laws of England. nor of their own, till fuch time as the Conqueror had fo declared them; now what do they defire in order to reneral Council vive their Government? First, they humbly beg of King at Caffels of all Henry II. that fince he was pleased that they should remain as a diftinct Dominion, that their ancient Customs, there, Anno or Ulages should not continue; that he would be pleafed 1170. Eccleto ordain, that fuch Laws as he had in England should fiaftical Laws be of force and observed in Ireland; pursuant to which of England he grants them power to hold Assemblies by the three Estates of the Realm, and that they should be regulated made of force in Ireland, Ge- according to the institution, and manner of the Parliaments in England, should have the benefit of Magna Charta and raldus Camother the great Laws of England, and by fuch means puts brenfis Topographia Hyberthem into a method of Governing themselves, according mie, L.3. cap. to the known ways of England, and to make fuch Laws as Par. 8. E. 1. m. should bind among themselves; and by following the example of those of England, their Judgment might Manhew Fa- be supervized, and corrected according to the Justice vis Hift. Angl. and Laws of England, by Writs of Error, Appeal, and p. 121. leges Anglia ab om- the like.

mibus funt gratanter precepta. Ret. Placita

13. Hybern.

* Orucks case 33. Eliz. Cok. 7. part fol. 23. Calvins case. Parliament, p. 198. to 208.

Now here is no continuing or reviving their Ancient Government, but to the introducing a new one, part Civil, and part Heril; nor indeed had they before any fuch thing as a Parliament there, or general Assembly of the three Estates; for when Henry the II. went over, there were feveral Kings or Scepts, who had their feveral and diffina Assemblies; but when they submitted, this great Affembly of Estates which he constituted, was a colle-Aion out of all of them, for their future well Government; fo that whatfoever modus of Regiment the Conqueror declared, it was no more then for the well Governing of the Place, and making fuch Laws as were necessary and proper amongst themselves: But for them to impose, by vertue of an Act of Naturalization, upon an absolute Kingdom as England, without the confent of the three Estates of the same, furely was never intended

Sir John Dawys on the Conquest of Ireland 103, 104. 105.

Of Maturalization.

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VIII. By the Laws of France all persons not born under legeance of that King are accounted Aliens, and if they dye the King is entituled to the estate, for all shall beseized into his Exchequor or Finances; but if they make a Will the prerogative is disappointed: Yet that extends only to Chattels personal, in which Strangers passing through the same have greater immunities then Aliens there resident, for Travellers dying without Will, the Heirsor Executors shall have benefit and possession of their Estates.

IX. The like Privilege the Kings of England formerly claimed in the Goods and Estates of the Jews after their death if the Heir sued not, and paid a fine to the King to

enjoy them, as by this Record appears.

Juratores super sucrum suam. dicunt, quòd pradictum Messuagium suit quondam Eliæ le Bland, qui, &c. diem clausit extremum, & quia mos est Judaismi, quòd Dominus Rex. omnia bona & catalla Judai mortui de jure dare poterit, cui voluerit, nisi propinquior hares ejusdem Judai sinem secerit pro Escheat eisdem; dicunt quòd Dominus Rex dictum Messuagium dare 52. Anno poterit cui voluerit, sine injuria alicui facienda, si ita sit quòd 31 H.3. num. hares disti Eliæ sinem non secerit pro Catallis ejusdem Eliæ habendis, &c.

But whether the fame is now used may seem doubtful, for the goods of Aliens escheat not at this day to the Caroones case. Crown, but Administration shall be committed to the next Hobboys case.

of kin.

X. By the Laws of France, Flanders, Milan, and the French County of Savoy, though possessed by several other Princes, yet the Natives of the same partake in the immunities with the natural born Subjects of France; and if they dye without Will, their Heirs claim their Estates; the reason given, because, say they, those Countreys were never alienated from them, but were always annexed to the the Crown of France, who acknowledges them to be their Subjects to this day.

But in England it is otherwise, for those that are born in Gascoin, Normandy, Acquitain, and those other Territories which were formerly the possessions of the Crown of England, in which if any had been born when

Boy

Stephens case.

fubicat to the fame, they would have been natural born Subjects, yet now are effectmed Aliens. And fo was the Case vouched by Shard of a Norman, who had robbed to-Note, this was gether with others English, divers of His Majesties Subjects in the Narrow Seas, being taken and arraigned, the Stat. of 25 E. Norman wrs found guilty onely of Felony, and the rest of 3. its vouched Treason, for that Normandy being lost by Kiug John was out of the Allegeance of Ed. 3. and the Norman was ac-

before the by Shard in 40 Affize pl. 24. See Calvins case 7 Rep.

XI. In France the Kings may there Denizize, fo likewife here in England; but with this difference, the Letters of Denization by those of France remove the total difabi-

lity and incapacity of the Alien.

counted as an Alien.

But in England the Charter of Donation or Denization is but a temporary, partial, and imperfect Amotion of the disability of an Alien; for though it puts the person indenizon'd as to some purposes in the condition of a Subject, and enables a transmission hereditary to his Children, born after the Denization, yet it does not wholly remove the Difease or Nonability as to the points of descent or he. reditary transmission, and resembles a Person in case of an Attainder; and therefore if he purchases Lands, and dies without iffue, the Lord by Escheat shall have the Lands.

And therefore in Lineal Descents if there be a Grandfather natural born Subject, Father an Alien, Son natural Subject, the Father is made Denizon, he shall not inherit the Grandfather; and if the Father dies in the life of the Grandfather, the Grandchild (though born after the Denization) shall not inherit the Grandfather, for the Denization does not remove, neither the personal nor

the confequential impediment, or incapacity of the Father. So likewise in collateral descents: as for instance, the Father a Natural born Subject has iffue two Sons Aliens, Hill. 16 Fac. who are both made Denizons, and one dies, the other shall not inherit him.

B.R. Godbolt 275.

XII. The like Law in Dower: A man feized of 30 H.S. Dyet Lands in Fee, and takes an Alien to wife, and then dies ; the wife shall not be endowed. But if the King takes an Alien to wife and dies, his Widow Queen shall be endowed by the Law of the Crown. Edmund, Brother of King

Co. Inft. 1. f.2.

44.

Godfrey and

Dixons cafe.

King Edward the I. married the Queen of Navarre, and 26 Ed. 1. Post. dyed, and it was resolved by all the Judges that she should part. 1. be endowed of the third part of all the Lands whereof her Husband was seized in Fee.

A Jew born in England, takes to Wife a Jew born also in England, the Husband is converted to the Christian Faith, purchases Lands, and enseoffeth another, and dy-1 Dors clause eth, the Wise brought a Writ of Dower, and was H.3. Memb. 17. barred of her Dower, Quia vero contra justiciam est quod ipsa dotem petat, vel habeat de tenemento quod fuit viri sui ex quo in conversione sua noluit cum eo adbarere, & cum eo convertere.

If an Alien be a Diffeisor, and obtains Letters of Denization, and then the Diffeisor release unto him, the Co. 1. Infl. fo. King shall not have the Land; for the release hath altered the Estate, and it is as it were a new purchase, otherwise it is as if the Alien had been the feosfee of the Desseige.

And though Aliens are enabled by Chartes of Denization, to a transmission Hereditary to their posterity of Lands; yet a Denizon is not capable of Honour, nor a transmission of the same, without Naturalization by Parliament; for by the Charter of Denization he is made, quasi seutanguam ligens, but to be a Member of Co. 4. Inst. for Parliament he must be ligens revera, & non quasi; for 47-by his becoming a Nobleman, he claims the place of Judicature in Parliament, the which he cannot till naturalized by Act of Parliamt, and then he may claim as eligible to the same, or any other.

CHAP. IV.

Of Alfens and Trials per medietatem, where allowed, and where not.

I. Of the manner of Aliens obtainthe Common-Law, and of the Antiquity of the Same.

II. Of the making the same a Law universal within this Realm, VII. Of the validity of a witas to some Persons, afterwards general, as to all.

III. Of the Writ, and some observa tions on the Summons of (uch an In-

IV. of the opportunity lost, or gained by praying this immunity.

V. Of the awarding of Tales up-

on request on such Enquiries. ing Trials per medietatem, at VI. Where this immunity does not extend in Aliens, and where it does in matters Civil and Criminal.

nels Alien, and of an Infidel. VIII. The title of a Renegado.

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IX. Of the benefit of the Kings Pardon, whether it extends to an Alien whose abode is bere; but bappens to be absent at the time of the promulging.

the Common-Law was wont to be obtained by Grant of the King made to any Company of Strangers, as to the Society of Lumbards, or Almaignes, or to any other Corporation, or Company, when any of them were impleaded, the movety of the Enquest should be of their Saf. TI. Coron. own Tongue : this Trial per medietatem in England is lib. 3. cap. 7. of great Antiquity, for in some cases Trials per medieta-Lanb. fol. 91. tem was before the Conquest, Viri duodeni Jure Consulti, Seu Wallia totidem Anglis, & Wallis jus dicando, and as the Commentator observes, it was called duodecim Virale Judicium.

TRiatio Bilinguis, or per medietatem Lingua, by

Co. I. Inft. £55.

II. This immunity a terwards being found commodious. to us Islanders became universal; for by the Statute of 27. E. 3. cap. 8. it was enacted, that in Pleas before the Maior of the Staple, if both Parties were Strangers, the

Trial should be by Strangers; but if one Party was a 27 E.3. cap.8. Stranger, and the other a Denizon, then the Trial should be per medietatem Lingue: But this Statute extended but to a narrow compais, viz. Only where both Parties

28 E.3.64 13 Were Merchants or Ministers of the Staple, and Pleas beford fore the Major of the Staple: But afterwards in the 28th Year of the same Kings Reign it was enacted, That all manner of Enqueits, which was to be taken or made amonalt Aliens and Denizons, be they Merchants, or others, as well before the Major of the Staple, as before any other Justices or Ministers : Although the King be party, the one half of the Enquest or proof shall be Denizons, the other half Aliens, if so many Aliens and Foreiners be in the Town or place where fuch Enquest or proof is to be taken, that be not parties, nor with the Parties in Contract, in Plea, or other quarrell, whereof fuch Enquest, or proof ought to be taken; and if there be not fo many Aliens, then shall there be put in fuch Enquests or proofs as many Aliens as shall be found in the fame Town, or places, which be not thereto Parties, as aforefaid is faid; and the remnant of Denizons, which be good men, and not fuspicious to the one Party or other.

By which Statute the same Custom or immunity was But if it be made a Law universal, although it be in the Case of the for Treason. King, for the Alien shall have his Trial per medietatem. contra Vide

It matters not whether the moyety of Aliens be of poltes num. 5. the fame Country, as the Alien party to the action is ; Duer 144. for he may be a Dutch-man, and they Spaniards, French, Walloons, &c. because the Statute speaks generally of Aliens.

III. The Form of the Venire facias in this case is, De Nicenet, &c. quorum una medietas sit de Indigenis, & altera medietas sit de aliegenis natis, &c. And the Sheriff ought to return twelve Aliens, and twelve Denizons. one by the other, with Addition which of them are Aliens, and so they are to be sworn; but if this Order be not ob- Stat. 18. Eliz. ferved, it is holden as a mifreturn.

cap. Crc. 3. It has been conceived of some, that it is not proper part 818, 841. to call it a Trial per medietatem Lingua; because any A-Bro. tit. trial. lien of any Tongue may ferve; but that furely is no Objection, for People are diftinguished by their Language, and medietas Lingua is as much as to fay half English, and half of another tongue or Nation whatfoever; nor matters it of what sufficiency the Jurors are, for the form of the Venire facias shall not be altered, but the clause of quorum quilibet babeat, 4, &c. shall be in.

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21 Herb.4.

Stamf. 154. Hill. 36 El.

Dr. Lopez

udges.

Fide Dyer

If both parties are Aliens, then the Inquest shall be as English; for though the English may be supposed to favour themselves more than Strangers, yet when both parties are Aliens, it will be prefumed they will favour both

21H .6.44 alike without any difference.

IV. If an Alien is party, who flips his opportunity, and fuffers a Trial by all English, the same is not a Verdict Erroneous; for ifhe will be fo negligent as to flip that advantage which the Law gives him, it is his fault: for the Alien if he will have the benefit of that Law, he must then pray a Venire facias per medietatem lingua at the time of the awarding the Venire facias: but if a neglect of that opportunity happens, yet if he prays it after the awarding a general Venire facias, the same may be retrieved, so as it be before the Venire be returned and filed; for then he may have a Venire facias de novo, or otherwise he cannot; nor can he afterwards challenge rhe Array for this caufe.

Pl.Coron. 159. if it falls out the Juries are all Denizons: though Stam-Dyer 357. ford feems to be of a contrary opinion, for the Alien must pray it at his peril.

V. If there be a general Venire facias the Defendent 3 E.4.11,12. cannot pray a Decem tales, &c. per medietatem lingua upon this, because the Tales ought to pursue the Venire faci-But if the Venire facias be per medietatem lingua, the Co.l. 10 f. 104 Tales ought to be per medietatem lingue: as if five Aliens

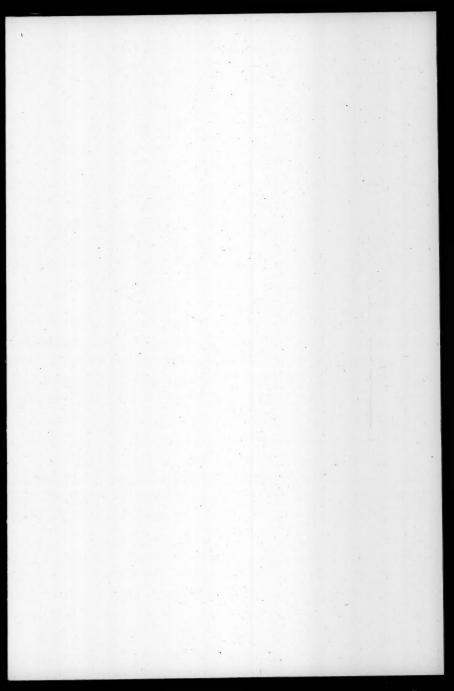
and five Denizons appear on the principal Jury, the Plaintiff may have a Tales per medietatem; but if the Tales be general de circumstantibus, it hath been held good enough. for there being no exception taken by the Defendent up-Ero. 3 part f. on the awarding thereof, it shall be intended well award-

ed.

If an Alien that lives here under the protection of the King of England, and amity being between both Kings, commits Treason, he shall by force of the Act of 1 & 2 1'. & M. be tried according to the due course of the Comcase by all the mon Law, and shall not in that case be tried per medietatem lingua.

> But in case of Petit Treason, Murder, Felony, &c. if he prays his Trial per medietatem lingue, the Court ought to

grant it. f. 144 the safe of Serily, where the point is fully handled. Co. Inst. 3 part f. 27.



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Yet if an Information be exhibited against an Alien, the Moores 557. Trial is not per medietatem, but according to the Com-Barrs case. mon Law.

If an Alien in League brings an action (if there be cause) the Defendant may plead in abatement; but if it be an Colivre Coke

Alien Enemy, he may conclude in the action.

In an action for words the Defendant pleaded not Alien 1. guilty, and faid he was an Alien born, and prayed Trial B per medietatem Lingua, which was granted, and at the 25 Ed.3.cap.& Nisi prim in London; but fix English-men, and five A-28 Ed.3.23. liens appeared, and the Plaintiff prayed a Tales de Cir-2 H. 5. 3. cumstantibus per medietatem Lingue, and it was granted :

fo there wanted one Alien, and the Record was:

Ideo alius Aliegena de Circumstantibus per Vic' London ad requisitionem infra nominati Julii Cæsaris, per mandat. Justitiarum de novo apposito, cujus nomen panelo pradict affilatur secundum formam Statuti in hujusmodi casu nuper editi & provisi. Qui guidem Jurat, sic de novo appositus, viz. Christianus Dethick Aliegena, exactus venit, ac in Juratam illam simul eum aliis Juratoribus pradict. prius impanellatis, & Juratis juratus fuit, &c. It was found for the Plaintiff, and afterwards moved in Arrest of Judgment. That no Tales was to be granted de Circumstantibus, when the Trial is per medietatem Lingue, by the Justices of Nisi prins, by the Act of 35 H. 8. because in Mich 35, 36. the Act it is spoken of Free-hold of Jurors, and an Alien Eliz. in B. R. is not properly faid of any Countrey, or to have any Sir Julius Cafree-hold; but it was adjudged because the Statute was far Versus made for speedy execution, that it should be expounded Fhilip Corfini. favourably, according to the intent, and meaning of the Makers of the Act; and though in this cafe the Tales was prayed by the Plaintiff, where it ought to have been ad requisitionem defendentis, yet that should be taken to be but a misprission, and would be a-

mended. VI. If the Plaintiff or Defendant be Executor or Administrator, though he be an Alien, yet the Trial shall be by English, because he sueth; En auter Denit but if it be averred that the Testator or Intestate was an Alien, then it shall be per medietatem Lingua.

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Shely a French usan who joyned with Stafford in the Rebellion , in the taking of Scarborough Castle in the County of Tork, he being taken was arraigned in the Kings Bench upon an Indiament of Treasen, and the Indictment was contra legiantiam suam debitam; and the Indistment was rul'd to be good, although he was no Subject, because it was in the time of Peace between the Queen and the French King. But if it had been in the time of War, then the Party should not have been indicted, but ransomed. It was likewise rul'd there, that the Trial was good, although the Venire facias awarded in York was general, and not de mediatem Lingua; for fuch Trial per mediatem Lingue does not extend to Treafons, 4. Ma. Dyer 145. the Indicament ought to omit the words Naturalem Dominam fuam, and begin that he intended Treason contra Dominam Reginam, &c. Hill 36. Eliz. in B. R. Stephano Ferraro d'Games case in Dr. Lopez Treafon.

If an Alien Enemy come into this Realm, and be taken in War, he cannot be indicted of Treason, for the Indictment cannot conclude contra legiantia sua debitum, for he never was in the protection of the King; and therefore he shall fuffer death by Marshal Law, and so it was rul'd in 13 H. 7. in Ferkin Warbecks cafe, who being an Alien born in Flanders, feigned himself to be one of the Sons of King Edward the 4th. and invaded the Realm, with intent to take upon him the Dignity, who had his Judgment and Trial by Martial Law, and not by the Common-Law of England.

VII. The Kingdom of Ireland was a Dominion fepa rated, and divided from England at the first, and cameto Sir John Davis the Crown of England by Conquest, in the time of Hemy It t Conquest of the Second; and the meer Irish were as Aliens, Enemies Repu Ireland, fo. 103, to the Crown of England, and were disabled to bring neve 404, 105. any action, and were out of the protection of the Law foit of this Realm; and five Scepts of the Irish Nation were who only enabled to the Laws of England, viz. Oneil de Tria Ultonia, O Molloghlin de Media, O Connoghor de Connacia, not s O Brian de Tholmonio, and Ma Murogh de Lagenio, as that appears by the Records of the Dominion of Ireland, and satis feveral

feveral grants have been made to the Irish, which proves them to be meer Aliens. But afterwards, though the fame was a separate and divided Kingdom, yet whilft they were under the subjection and obedience of the Kings of England, if High Treason had been committed by an Irish man, he might be arraigned, indicted, and tried for the same within England, and by the Laws of Co.7. fol. 23. England; and fo it was refolved by all the Judges of Calvin cale. England in Orucks case, 33 Eliz. and also in Sir John Perrots case, that Ireland was out of England, and yet that all Treasons committed there were to be tryed in England, and that by virtute of the Statute of 38 H. 8. cap. 23.

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Arthur Crohagan, an Irish man, was arraigned, for that he being the Kings Subject, at Lisbon in Spain used these words, I will kill the King (inuendo Dominum Carolum Regem Anglia) if I may some unto him, because he is a Hemick; that afterwards he came into England, and was taken, and tried by a Jury of Middle fex, and was found guilty; and it was held High Treason by the Course of the Common Law, for his Traiterous intent, and ima-

gination of his heart is declared by these words, and Mich.4. Car. 1 Within the Statute 25 E. 3. He confessed he was a Domi- Cro. fol. 242 o it

mean Fryar, and Priest in Spain.

Bracton fayes, that an Alien born cannot be a witness; 14 Eliz.in th but that is to be understood of an Alien Infidel: for the case of the Bishop of Rosse, being an Alienborn (a Scot) was ad-folk Co. Inst. 4 mitted to be a witness, and sworn.

Yet an Infidel may an bring action against another Merchant, or any other however *, and that without * 11 H.8. fe.;

epa tontroverfie. eto

The testimony of a Renegado is not to be received and at this day, by the Laws of any Christian Kingdom, or Republique; he that hath once renounced his Faith can ring never be believed, therefore he cannot be a witness; and aw foit was rul'd where one Domingeo de la Cardre,a Renegado, Hill 17, 18 vert who was fworn, and gave evidence; afterwards a new Car. 2di.in B. I Trial being granted, his testimony was rejected, and he R. Robles. Val. not fuffered to be fworn, it being at his Trial proved Langitim. , as that he was a Spaniard, and a Christian by birth and eduand sation, and after became a few.

Aliens Trials.

If an Alien be resident, and commits an offence, he Hobart fo.271 shall have the benefit of the Kings general pardon; but if Courners case he is not in the Kingdom at the time of the pardon promulgateed, then he loses the benefit of the same; for he is no otherwise a Subject but by his residence here.

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CHAP. V.

Df Planterg.

I. Of Poffession, and its criginal

gives a right to Planters.

III. Of Civil Vacancies, bow far the same may be possessed. IV. Of Planters , whether they

bave a firm right, so as to dispose by Will, or only a Usu-VIII. Of necessity considered in

fructuary poffession.

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> necessary for the Support of bumane life, generally considered according to the Laws of Na-

> VI. Wherefore one man may naturally have more then another, and what conditions are annexed

to such fortunes for those that are in necessity.

II. Of Vacancies natural, which VII. Whence it is that there was at the beginning, and is still a tacit condition of reassuming our Original rights in case of extream or natural necessity for natural Community.

a Christian Community.

V. Of Planters manting things I X. Of the Primitive Communion, considered in reference to its restrictions and limitations.

> Of those things that are dedicated to God and boly use, whether subject to the relief of our

necessities.

Aving in the first Chapter of this Book discoursed of the original of property deducing its inception, to that which we call possession or meum, and how the fame may be altered by War, it may not feem unnecessary to discourse of the acquiring of property in the new discoveries of those vast immensities of America, which being prepoffels'd feem to deny us legally that title which we pretend to.

Possession by Law is esteemed the highest title that men can pretend to what they enjoy, which is nothing else but positio pedis; as if the Ancients had no other seal to confirm their tenures, but the prints of their feet; and good reason, seeing the mind is not able to take up a place fo well as the Body; for many mens wills may concur in (wishing and liking) the same thing, but many bodies cannot concur to the possessing it. Besides, the mind cannot fet an outward mark on what it likes,

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that thereby others might be warned to abstain from it. all which the Body properly doth. Abraham and Lot going to plant, declared no more then this, there was room or vacancy enough, and therefore, without further examination, or scruple, they knew they might turn to the right hand or to the left, to possess what they would to themselves.

II. This Vacancy, which gives us a right to plant, is to be considered in two respects, 1. Natural, 2. Civil: the first is in things which may be posses'd, but actually are not, neither in property, nor use; such a Vacancy which is nullius in bonis, might be occupied by Switzers, who, as Cafar faith, would fain have changed their rough Hills for fome near Campania; and Deferts or Places un-inhabited, may be posses'd and appropriated to the first Planter, and that without all controversie, but especially by those who being expulsed from their own Seats Ticinus Annal. or Estate, seek entertainment abroad : The Ansebarians

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in Tacitus cry out, As the Heaven to the Gods, so is the Earth granted to Mortals, and what is void is publique: Looking up to the Sun and Stars, they did openly as it were enquire of them, Whether they were pleased in beholding any ground empty, and without Inhabitants, they should rather cast forth the Sea, and overwhelm the Spoilers of the Earth. III. Civil Vacancy, is where it is not absolutely in-

Ubinec poffeffio fronc.

est plene in ho- corporated, as among the roving Arabians and Moores mine, nec homo in Barbary, and other Affricans and Americans, who plen: in pofferpossess one place to day and another to morrow; these by their frequent returns, shew that they abondon not the Places they remove from, as derelitta que quis in bonis amplius numerare non vult; we can not fay, that their natural, or voluptary interest in them is no way impro-

* De Jure Belli ved; for Grotius feems to be of opinion *, that if there d: Facis lib. 2. be fome Defert or barren ground, the fame ought to be cap. 2. S. 17. granted to Strangers upon their request, and, fays he, I is also rightly seized on by them, giving this reason, For that Lands ought not to be esteemed occupied which is not cultivated; but only as to the Empire, which re-

mains entire to the first People, they do no offence who inhabit, and manure a part of the Land that lyes neg-Dien. Prufaenlected. fes Grat.5. But m it.

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But we must press this Argument of Grotius very tenderly, lest by the same reason others conclude, that those Estates which are not competently improved, are derelicted and occupiable by others, which would introduce perpetual confusions, and easily perswade every man that he could husband his Neighbours Lands better then himself: However this is a clear Case for all Planters, Relle falla est that those wastes, or afperi montes, which the Natives concession, que est make no use of, nor can receive any damage by their fine damus albeing posses'd by others, may lawfully be impropriated trius. by them.

IV. But admitting that Planters may appropriate a Plantation for their living, whether fuch may dispose of the fame by will (we supposing the Possessor having no Heir) for that he might feem to have but a ufufructuary possession, till a descent had been cast, which then perhaps may turn the fame into a right *: Without all con- * Asit is controversie the very immediate possessing, and planting funant to nacreates a right against all, but he that hath Empire there, thare of suband that very right the party in his life time might have fistance, which actually transferred over to another: Now though the was before devise in the will operates not till after his death, yet uncertain, the gift is made during his life; according as the French fixed; so it is have it, Se despouiller avant que de s'en aller coucher, that necessary that is, man first puts off his cleaths, and then goes to bed.

the confent which others

gave to this at first, should stand fixed, especially if there was no obligation, or declaration at the first to the contrary. Vide Selden de Fure Na. & gen. adm n. Het, id obligat. quod est ex officio quot legis est: But the function of a Law supposes the nullity of a state of nature, not of a right of nature.

V. Again Persons having arrived in those Territories, and planted, but before they have reapt the fruits of their labour, necessity is found within their Huts, and a fupply of things for the fupport of humane life is wanting, whether fuch may feek the means of subfiftance by the Laws of nature, and in case of resusal (after request) force them from their Neighbour Planter? Surely that which is necessary for any natural substance, and necessary to another, belongs justly to me, unless I have merited to lose the life which I feek to preserve. There were a defect in Gods creating our natures fuch as they

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ut fructum veniat fingulis.

are, if he did not provide means to uphold their beings, according to the natural faculties which he hath given Pla mater pa- them. A good Mother divides her bread among her nem inter libe- Children as a morfel may come to each; let us thereres distribute, fore judge this case by those rules of Justice by which we judge other cases, if a Father in his Will pass by a Child or names him, but upon false causes leaves him nothing, he is notwithstanding by the equity of the Civil Law admitted to a Childs part as legitimate, and may form his action contra Testamentum inofficiosum: Men are all in kin, and we derive one from another, and to let others fettle in our places, who may justly expect as much due to them for their natural subsistance, as was to those who before went out of the World, to make place for them, yea though they affign them nothing at their departure.

Man were of all living Creatures most miserable, if he might not during this life have that measure, which God would not have an Ox defrauded of; thus hath every Dung-hill-fly a right to live, and to remain infectile, which besides existence bath sense, and may not justly be deprived of that its chiefest felicity, unless it be impor-

tunate to a nobler Creature.

VI. 'Tis very true, that no man can pretend to share in the fiveat of another mans browrs, or that the pains and wasting of another mans life should be for the maintenance of any but his own; nay though it be granted, that those Neighbour Planters, who being fettled before us, and having acquired either by industry or lawful donation the fruits of other mens labours, and con-* Xenophon in fequently must enjoy more plenty then a new Comer or his Answer to the Sinopenses, Planter; yet all that they possess is not properly theirs,

Ubi jus emendi for if another by extream necessity be perishing, and nobis non con- they have above what they can confume in a natural ceditur, five in way, then they have no fuller a property in that plenty Barbarico, five way, then they have no funct a property in that pickly in Gracianico then Stewards have, and for this regard they are to folo, ubi que called in Scripture : The Earth still is the Lords, and opus sumimus, the fulness of it; it is his, for he made it of his own non per proter-matter, and for the fashion of it used not our aid; yea, viam, sed ex ne- tis his Sun which still produces, and his Clouds which ceffitate exped. drop fatness: We can only pretend the Contribution of

a little pains, for that which is our natural share; fo that in plain reason we may not expect to be otherwise qualified then Stewards, for all that which is not probably necessary for our own subsistence, or for theirs, who fublist only by us: Wherefore if Lazarus ready to perish (not by fault but by misfortune) had taken Dives his Crums contrary to his will; yet he had not finned no more then he who takes fomething which the Lord Leffius lib. 2. or Master hath given him, though the Steward contra-cap-12.dub-12. dict it: But if it so happen, that both the Planters are num. 70. in pari necessitate, then melior est conditio possidentis; or. as Saint Paul's words are, when he excited the Churches Charity and Alms for the relief of the diffressed Members of Christ, Not (quoth he) that ye should be streigh- 2 Cor. 8. 13.

tened, and they abound.

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VII. The will of those who first consented mutually to divide the Earth into particular Possessions, was certainly such as receded as little as might be from natural equity; for written Laws are as near as possible may be to be interpreted by that; and therefore in cases of fuch extremities we are not without examples, of taking the goods of to one fupply the necessities of many. And therefore at Sea, if Provisions begin to fail in a Ship, Grotius de Jure every one may be forced to bring out openly what he Belli ac Pacis laid in for his paffage in particular: fo a Ship at Sea, 116.2. cap. 2. having in stress of Weather spent her Sails, Cordage, and Leges bumane Anchors, meeting other Vessels at Sea, may take a sup-obligant, uti ply of fuch as shall be wanting; but yet governed accor-fastas funt, sciding to St. Paul's word, fo that fuch taking streigh-licet cum semsu tens not the other Ship. So when the Sea breaks in bumane imbeupon a Countrey, we may dig in the next mans grounds to make a bank, without staying for the owners permission; yea tear down any mans hedge or fence, when the Common paffage is stopped: For in such cases of necessity humane Laws (as is mentioned afore) do not fo much permit as expound their natural equity; and that which Men give to those who are so innocently distressed, which borrow life only from the shadows of death; Et pifta je tempestate tuentur, is not so properly a Charity to them as a duty; and if he be a Christian that gives, perhaps he doth more Charity to himself then to the Receiver.

VIII.

Nequicquam fundo suspirat

VIII. The reason of this Christian Charity, or Communion, is as far above the natural, as Christ himself was above Nature, this requires an equal beating of all pulses, that as Fellow-Members we have a Homogenial fense and palpitation; we are to divide a Cruze of Oil, and a few handfuls of meal, with one of Christs Flock, with an abandoned Creature; and what can be in more extremity than a poor Planter, in a strange Place, destitute summus in imo. for the prefent of the supports of humane life?

And furely the violation of this Jus Charitatis is no less then their, in those who having extended fortunes, never defalcate a Gibeonites Crust perhaps for a wandring Angel: these steal even the Ship-wreck'd mans picture from him, which as his whole inheritance he carried at his back, to move compassion, and by the infatiable Sea of their Avarice, and Luxury, they wreck him over at Land.

IX. But this free Primitive Communion had, and

hath its bounds, and its quantum in Contributions, as wellas the natural, otherwise it might be fraudulent, and thieving: For they who possess but a little, would contribute it all, on purpose to share equally with those who possess very much, which would introduce a visible decay, and ruin in all, as Tiberius rightly observed *. inquit socordia on M. Hortalus his petitioning an Alms for Augustus Cafar's fake, Idleness would encrease, and industry languish, if men should entertain no hope, no fear for themselves, but fecurely expect other mens relief, idle to themselves, and burthen som to us.

dustria, finullus ex se metus aut Spes, & Securi omnes alienæ Subsidia expettavi, & nobis gravis. Tacit.

Intendetur

languescet in-

Wherefore in the midst of that primitive Communion, bunt, sibi igna- we find that the Apostles went Domatim, from house to house breaking of bread, therefore they even then retained by their houses in property; which property is fupposed by the eighth Commandment, as well as it is by Christian Charity: For no man can steal, but by invading the right of another; and as for Charity, it is neceffary he have fomething of his own, to be able to fulfil its commands, and to make a dole at his door; and it is very convenient that he give it rather with his own hand, then by some publique Collectors, For Charity is bated most with the sense of its own action. Moreover under

denth . 7. 11.

under the Laws, Tews were commanded, to love one another as themselues; yet this Command took not away property then, therefore it takes it not away now; notwithstanding we own the use, or usufruct of our properties to the distressed, though our selves be at the same time in diffres; just as we are commanded, by the peril of our own lives, to endeavour to fecure our Neighbours life, which is yet a Charity more transcendent then the other, by how much life is above livelyhood. And though the various Laws of Countreys have variously provided punishment for those, who out of meer necessity take fomething out of anothers plenty; yet that proves not the Act to be fin, or repugnant to equity, or conscience, but rather repugnant to the conveniency of that Kingdom, or Republique, where the Act is committed; and the true reason of the same is, lest thereby a gap might be laid open to Libertinism. Besides, Reason of State, we know, confiders not vertue, fo much as publick quiet and conveniency, or that right which is ad alterum.

X. We will now confider those things which are

Gods, which yet are not his in fuch a strict rigorous fence, but that they lye open to the exceptions of our Hence that which is devoted as a Sajust necessities. crifice to him, in case of necessity, may be made our dinner, witness the Action of David: Wherefore the confequence of our Saviours answer was very strong, when he defended his pulling the Eares of Corn in anothers Field: That if it was lawful for David in his necesfity to eat that Bread, which was provided for the Table of God; then how much more was it lawful for him, and his Apostles in their necessities, to take a refreshing out of that which belonged to Man? By the Canon Law, if no other means can be found, the Decretals of Veffels of the Altar may be fold, to redeem those Souls, Gratian lib. Sywho are enthralled in mifery, and captivity; and is nodus Nicaen-there not good reason for it, seeing they serve but for dus Aurelacenthe Souls of Men, and therefore the Souls of Men are fis 1. Can. Conmore precious then they: 'Yea the Sacrifice it felf, cilium Toletato what end is it, but to obtain a flate of piety for num.

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Upon what hath been faid, it may not feem an injury if a Planter (wanting those things for the support of humane life) requesting a reasonable proportion Grotius de Ju- of his Neighbour (having it to spare) with an intenre Belli ac Pa-tion to repay, if denyed, by force take the same from cis lib. 2.cap. 2. him; for that reason which creates a punishment in a settled Commonwealth for the like actions, does in such places fail.

CHAP.

CHAP. VI.

Df Werchants.

I. Merchandizing, the same is ho-XI. Goods brought in by them, the nourable, and profitable, both to Prince and State.

II. The Advantages that might accrue to Kingdoms, if the more XII. Merchants Strangers made Nobler and Richer fort applyed Denizons by Parliaments, or Letthemselves to the same.

III. Of the first Institution of the Company of Adventurers.

I V. Of the Institution of that in England to the Indies.

V. Of the forming of that in Hol-XIV. One Merchant may have an land to those parts.

VI. Of the forming the like by the Most Christian King to the same

parts.
VII. Of the advantages, and dif-XV. Of their Immunities, which advantages, considered as in reference to reducing them to Companies.

land were provided for of old. IX. Of their immunities settled by

Magna Charta.

X. Of Merchants Strangers, whose Prince is in War with the Crown of England, bow to be used in XVIII. The necessity and adtime of War, and the reasons why Merchants Strangers ought to be used fairly.

Moneys raised how to be dispofed according to the Statute of Imployment.

ters Patents, to pay as before they were fo made.

XIII. What things requisite that make a Competent Merchant

according to Law.

Account against his Partner, and if he dyes no Survivorship to be of the Estate belonging or acquired in their Traffique.

they claim by the Custom of Merchants, in reference to Ex-

change.

VIII. How Merchants in Eng-XVI. All Subjects are restrained to depart the Realm, but Merchants.

> XVII. Probibitory Laws bind Foreiners according to the Leagues

of Nations.

vantage that is incumbent on Merchants to preserve their marks.

Here are certain affairs which should be left to the poor and common People to enrich them, but there are others which they only can execute which are rich; as that at Sea by way of Merchandizing, which is the most profitable in an Estate, and to the which they should attribute more honour then some do here at this day. For if in all Estates they have thought it fit-

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* Frater mer-ting, to invite the Subjects by honour to the most paincatura ulum ful, and dangerous actions, the which might be profitable Naves rei mito the Publick; this being of that quality, they should litari , & tuattribute more honours to those that deal in it : And if tandæ in mari Nobility hath taken its foundation from the courage of contra exter-Men, and from their valour, there is certainly no vonam vim reipubl. inservire cation in the which there is fo much required as in this; ceperunt.Arithey are not only to encounter, and strive amongst Men, ftot. 7. Pol. but fometimes against the four Elements together; which 6. Mare & classem in bel- is the strongest proof that can be of the Resolution of lo effe tutelam Man. This hath been the occasion, that some have been reipubl. ait of opinion, that they should open this door to Merchants, Tacitus 5. Hito attain to Nobility, fo as the Father and Son hath Hor. Claffes Imperii muni- continued in the same Trade, and to fuffer Noble Men, menta vocat who are commonly the richest in an Estate, to practife Atheniensium themselves (without prejudice to their condition) in legati aput this of Commerce; the which would be more honourable Thucididem unto them then to be Ufurers, and Bankers, as in Italy; lib. I. Hiltor. Orat. ad Lace- or to impoverish themselves, in doing nothing but spend dæmonians, and make confumption of their fortunes, and never gafortunas Gracia in navium præ-thering or laying up. fidio ficas fuiffe

pradicant, ejus rei muri lignei Themistocles abunde sidem secerunt, idem experientiasatis bodie loquitur. Inde Cosmi Medicæo samiliare suit distum, Non habendum potentem qui potentiæ terrestri, non simul etiant navalem haberet conjunctant. Et Hispanorum est adagium, Regnum sine Portu esse sicut furnum absque igne: Pratequam quid navigationes cultui vita, & artium tradustioni Coloniarum valetudine. & vo-

luptati serviunt.

II. Hence will grow many advantages, both to the publique, and private; To the publique, for that they that should deal in Commerce, having means, courage, and sufficiency for this conduct, it would be far greater in the surnishing more Ships to Sea, and better armed, the which the Estate at need might make use of for the safety of the Publick; and would adde to the reputation of the Nation in all parts, they knowing that an indignity, or damage offered to such, would require satisfaction with a strong and powerful hand; the which they cannot do, who being poor, and having but small stocks, or what they borrow from Bankers, or are indebted for the Cargo wich they send forth, have

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have not the courage to hazard themselves, and their all in an enterprize that is great: Besides, such who have honour, riches, and courage, would keep up the reputation of their feveral Commodities, by the not leffening the Market, the which the poorer fort, to pay Customes, Freight, Bills of Exchange, and other contingent, and necessary charges, which accompanies the importing, they are often forced to mortgage the Cargoe to the Bankers, at excessive usury, or else to sell for ready money, for an inconsiderable gain, nay some rather then their wants to be known, for ready money will fell for lofs; all which would be prevented, if fuch Perfons of value would apply themselves to a prudent management of the fame; for whatfoever hazard they run. there would be more gotten by fuch in 2. voyages, then the smaller fort in three or four Voyages, and by that means it would be the occasion of preventing of many expenses, or importuning their Prince with demands; nay perhaps, they might get more at Sea in one year, then in ten at Court. Besides experience hath thaught, and doth daily manifest, that where the richest have dealt in this of Commerce, it hath enriched both them, and the Estate under which they lived; and this day the Examples of the Venetians, Portugals, Spaniards, and Hollanders have made it known unto us.

I II. The confideration of which first gave light to that industruous Nation the Burgundians, to procure the Association, or Incorporation by John Duke of Brabant, of that Ancient Company of the Adventurers Anno 1248, which were then called the Brotherhood of Saint Thomas Becket of Canterbury; which being afterwards translated into England, was by Edward the III. tonsirmed, and by his Successors Henry the IV. Henry V. Ed. IV. Henry VI. Richard III. and King Henry the Seventh, who gave them the name of Merchant Adventurers, and from him successively hath their Charter been consirmed down to his facred Majesty that now is; and as this Society is of Ancient estimation, so is their Governement very commendable.

IV. The Society of the Company trading to the East Indies differ from others, both as in reference to

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Persons, Members which are at this day many of the principal Nobility of England; as also for that their Adventurers run all into many stocks, and is governed and carried all jointly upon benefit, and lofs, they were incorporate Anno 1500. and fince then they furrendred their Charter, and accepted a new one; and are incorporated by the name of Governour, and Company trading to the East Indies; their Adventurers run all into one Stock, and is governed and carried on upon benefit and loss; the same being at this day, according to the Subscriptions, about four hundred thousand Pounds, which the feveral Persons Subscribers may sell, transfer, and dispose of; but they can no wayes take out the same. The great Stock may be encreased, if the Company shall fee occasion so to permit; but they are very cautious of the fame, for that the greater the Dividends, the more reputation the Stock bears, which above all things is to be maintained; however directly upon his own account no Person can have above ten thousand Pounds Stock there, nor can he have a compleat title till he is made a Freeman of that Society; their returns are very profitable, and of late very rich, and have many Places of great importance in India, as Mellopotam on the Coast of Cormondel, Bombay, Surat, Fort St. George, Bantam, &c.

V. The Dutch having found relief in their diffress from the British thore against their powerful Enemy, found also a patern to carry on Commerce, they not being wanting in the imitating the Incorporation of a Campany trading to those Places which they posses'd in the East Indies; and therefore in the Year 1602 leave was granted from the Estates to traffique into those Parts before all others, during the space of one and twenty years, the which was granted them, in consideration of five and twenty thousand Florens, which they promifed to pay to the Estate during the first ten years. Thus reduced all into one Company, Amsterdam had one moyety, Midleburgh in Zealand a fourth part, Delph, Rotterdam, Hoorn, and Enchuysen had either of them a fixth part, and the whole Stock of this Union amounted to fix millions of Livers, or fix hundred thousand pounds Sterling.

For the direction of this Trade, and the interests of the Associates, they have established, in either of those Towns a certain number of Administrators, at Assister twenty, at Middleburgh, twelve in either of the rest seven; and if any dyes, the Chamber of the Place names three, of which either the Estates General, or the

Magistrate of the Town chooseth one.

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Those Chambers choose Seventeen among the Administrators, that is to fay, Amsterdam eight, Middleburgh four, Delph and Rotterdam two, Hoorne and Enchuysen two: and the Seventeen are chosen alternatively, fometimes at Middleburgh, fometimes at North Holland; the which are called together to refolve jointly of how many Ships and of what Equipage and Furniture they shall make the Fleet which they mean to fend, and to what Fort or Coast they should go. This Affembly is held fix years together at Amsterdam, and afterwards two years at Middleburgh, and then again at Amsterdams By the conditions of the accord the Ships must return to the same Port from which they parted; and the Spices which are left at Middleburgh, and other Chambers, is distributed amongst them by the weight of Amferdam, and the Chamber which hath fold her Spices may buy from other Chambers.

By this Order they have hither to continued this Commerce with reputation, not as simple Merchants only but as if they were Sovereigns, they have made in the Names of the Estates, Alliances with many of the Princes ofthose parts; as with the Kings of Sian, Quadoen, Patam, Johor, the Heir of Mataca, Bornean, Achin, Sinnatra, Baretan, Jocotra, and other Kings of Jatta; they have made themselves absolute Masters of the Island of Amboina, but by what means? - Where they have a President, which governs in their name. At Banda they have a Fort for a retreat, where they must deliver them the Spices at a certain price. In Trinate they have another a mile distant of that of the Portugals; at Magniene they have three; at Motire one; at Gilolo they have taken that which the Portugales have built; and indeed whatfoever either can, or many confit with their interest in those parts, they have engrossed, and Ddd

by that means almost the Trade of the whole Spices of the East.

VI. So likewise the most Christian King hath within few years established such another Trading to those of

Eastern Parts.

And in England we have several others, as that of for trading to Turkey, that of Africa, to Guiny, and feveral others, dividing the feveral Trades according to the in Coasts and Places where they are appointed; forbidding them to intrench or incroach on each other, fo likewise to all other his Majesties Subjects, on severe penalties.

VII. Now it is not the dividing of the Trade into Companies, that can answer the expectation, but it is the dividing the Trade into Companies where the Place du may bear it; as that to the Indies, Turkey, Hambourough, and fome others. But to fome others, as the Canaries, France, or any of those Places on this side the Line, it has been conceived, the Trade will not bear it, but the same would be better distributed, either into the Trade of voluntary Affociations, or fingle Traders: others perhaps would refult into Monopolies, if incorporated; however the Standard rule is, to know whether the Trade of the Place will bear a Campany, or not.

VIII. Merchants in England were always favourably provided for by the Common Law of this Kingdom: By the Ancient Laws of King Alfred it was pro-Mirrour cap. 1. vided , Defendue fuit que nul Perchant Alien ne pantaft Angleterre, forfque aur quater Foires, ne que nul Demeuralt in la terre outer quarante jours : Mercate rum navigia, vel inimicorum quidem, quacunque ex alto (nullis jactata tempestatibus) in portum aliquem invehentur tranquilla pace fruuntur, quinetiam si maris acta fu-Etibus, ad domicilium aliquod illustre, ac pacis beneficia donatum navis appulerit inimica, atque istuc nauta confugerint, ipsi & res illorum omnes angusta pace patiuntor.

IX. Again, by the Grand Charter of our Liberties Magna Charta they are provided for in these words: Omnes Mercarecap. 30. res nisi publice antea prohibiti fuerint, habeant saleum & securum conductum, exire de Anglia, & venire in Angliam, & morari, & ire per Angliam, tam per terram,

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Jett. 3. Intr. leges Eihel. cat.2. s of quam per aquam, ad emendum, vel vendendum, sine omnibus malis tolentis per antiquas & rectas consuetudines , praterthin quam in tempore guerra. Et sint de terra contra nos guerrina. hose & tales inveniantur in terra nostra in principio guerra, atthehiantur fine damno corporum suorum, vel rerum, donec t of sciatur à nobis, vel à Capitali Justitiario nostro, quomodo Mercatores terra nostra tractantur, qui nunc inveniantur the in terra illa contra nos guerrina. Et si nostri salvi sint ibi, alii salvi sint in terra nostra.

1. By which it is declared, that all Merchant Strangers might be publickely prohibited to Trade into this

Realm, be they in Amity, or otherwise.

2. All Merchant Stangers in Amity, except fuch as he fo publiquely prohibited, shall have fafe and fure conduct in feven things.

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4. By Water, and Land to go in, and thorough

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6. Without any manner of evil Tolls. 7. By old and rightful Customs.

X. But concerning fuch Merchant Strangers, whose Prince is in War with the Crown of England, if they are found within the Realm, at the beginning of the War, they shall be attached with a Priviledge and Limitation, i.e. without harm of Body, or Goods; with his limitation, until it be known to the King, or his * That is the Chief Justice *, how Merchants of England are used Keeper of the and intreated in their Countrey, and accordingly they absence. shall be used in England, the same being jus Belli. But for Merchant Strangers, that come into the Realm after Et in Republica War begun, they may be dealt withal as open Enemies: fervanda funt It being the Policy of England ever to entertain Mer-jura Belli, Co. 2. thant Strangers fairly. In the 18. year of Ed. 1. in the Inft. fol. 58. Parliament Roll it is contained thus: Cives London pe-

tunt, quod alienigent Mercatores expellantur à Civitate, Rot. Parliaquia dicantur ad depauperationem Civium, &c. ____ Re- menti 18. E.1. ponsio. — Rex intendit quod Mercatores extranei sunt fol. 4. num. 55.

idonei, & utiles magnatibus, &c. & non habet Concilium cos

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eos expellendi. However though great Immunities were granted them, yet they alwayes found Sureties, that

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Rot. Vascan. 18. they should not carry out the Merchandize which they

Ed. 2. m. 21. brought in.

XI. And at this day, if they bring in any Merchandize into the Realm, and fell the fame for Moneys, they are to bestow the same upon other Merchandizes of Eng.

4 H. 4. Ca. 3. land; without carrying of any Gold or Silver in coin, 5 H. 4. Ca. 9. plate or mass out, on forfeiture. The principal reason of this was, as well to preferve and keep Gold and Silver within the Realm, as for the encrease of the Manufactures; and the fame at this day extends as well to Denizons, fo made by Letters Patents, as Strangers; however he may use the same in payment to the Kings Liege

* Stat. 17 E. People, without * incurring the penalty of the Statute of 4. cap. 1. con-4 H. 4. but yet in strictness of Law ought not to receive

any Gold in payment. 7. cap. 8.

XII. All Merchant Strangers that shall be made De-+ 8 H.5. C.14. nizons, either by the Kings Letters Patents, or by Act 11 H. 7. c. 14. of Parliament, must pay for their Merchandize like Cu-1 Eliz. cap. 1. ftom, and Subfidy, as they ought or should pay before

Co.2. Inft. fol. they were made Denizons.

XIII. Every one that buys and fells is not from 742. Leg.unic. Cod. thence to be denominated a Merchant; but only he who de mund. & Al- traffiques in the way of Commerce, by importation or ceat. in Leg. exportation; or otherwise in the way of emption, venmercis 66. & dition, barter, permutation, or exchange, and which in Leg. mercis 207. de verb. makes it his living to buy and fell, and that by a con-Fignif. tinued affiduity, or frequent negotiation in the myftery of merchandizing: But those that buy Goods, to reduce them by their own art or industry into other forms then formely they were of, are properly called

C. ejiciens 88. Artificers, not Merchants. Not but Merchants may and do alter Commondities after they have bought them, for the more expedite Sale of them; but that renders them not Artificers, but the same is part of the mystery of Merchants. But Persons buying Commodities, though they alter not the form, yet if they are fuch as fell the fame at future days of payment, for greater price then

they cost them, they are not properly called Merchants, but are Usurers, though they obtain several other names,

dilt.

Paul. de Cafr. 19 Leg. eum #. de inft.

as Warehouse Keepers, and the like, but Bankers, and F.N.B. 117. B. fuch as deal by Exchange, are properly called Merchants. 38 E. 37. Ca. X IV. The Wares, Merchandizes, Debts, or Duties, 182. Per Legen

that Merchants have as joynt Traders or Partners, shall mercatoriam, not go to the Survivor, but shall go to the Executor of just act rescendi inter mercato-

him that is deceased.

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If two joynt Merchants occupy their Stock, Goods, res pro benefiand Merchandize in common to their common profit, one locum non baof them naming of himself a Merchant shall have an bet. account against the other naming him a Merchant, and Co. Sur Litt. fol. shall charge him as Receptor denariorum ipsius B. ex qua- 172.lib.Intrat. cunque causa & contractu ad communem utilitatem ipsorum fol. 17,18,19.

A. & B. provenient. sicut per legem Mercatoriam rationabi-

liter monstrare poterit.

ege X V. And as the Law establishes security for their Estates, so it gives them other immunities in their Commerce; for if one Merchant draws a Bill of Exchange Martin versus upon another, be it in-Land or out-Land, (if it be by R.2 Cro, fol. 7. way of Exchange) the acceptance of the Bill by the Party shall bind him to that party, to whose use the Money in the Bill is to be paid, and he may bring his action in his ore own name per legers Mercatoriam.

And so it is if a third Person, that is a Stranger to Vid. tit. Exthe Bill, shall accept the same for the honour of the change. Drawer, it shall bind him as affectually, as if he upon whom the Bill was drawn had accepted it; and this by

the Custom of Merchants.

X V I. All other Subjects are restrained to depart the Realm, to live out of the Realm, and out of the Kings Mich. 12 8 13 Obedience, if the King fo thinks fit; but Merchants are Eliz. Dyer fol. obedience, if the King to thinks it, but increased to 296. Fasc. 23. not, for they may depart, and the same is no contempt, Eliz fol. 375.5 they being excepted out of the Statue of 5 R. 2 cap. 2. And by the Common Law they might pass the Seas

without Licence, though not to Merchandize.

X VII. It was once conceived, that those Laws which were prohibitory against Forein Goods did not bind Merchant Stranger, but is was ruled otherwise: For in the Leagues that are now established between Nation and Nation, the Laws of either Kingdom are excepted; and therefore as the English in France, or in 19 H. 7. any other Nation in Amity, are subject to the Laws of

Ddd 3 that Tomlinion qui that Countrey where they relide; so must they of France, tam vers. Henry or of any other Country, be subject to the Laws of Engle Vale Pasca, land, when relident or here; and therefore if a French Exchequer.

Man imports any Points, Laces, Belts, Hats, and the like, they are forseited.

XVIII. The marking of Goods is of a great consequence, as in relation to the settling the property of the Merchandize in the right Owner; and in Courts of Justice, both the Civil Law, and the Common Law, hath a great respect to the same, therefore the use has been, that every particular Merchant, hath his particular mark appropriated to him; by which means, if the Person is of any value considerable, as in relation to Commerce,

his mark is prefently known.

Every Merchant is to fet down his mark upon his The Cutlers of London do Books of Account, wherewith his Commodities are margive to each ked; fo Companies and Societies have their particular Member a mark : No Merchant ought to use another mark, without particular leave first had of the Party whose mark the same is; for Mark, which cannot be used as Flags are the Enfigns that give conusance of the or appropri- Nation whose Ships they are, so marks are to ascertain ated without the Owners of their property, without confusion or a particular damage: And though to fet the mark of another Man order and leave of the alters not the property, yet it may work fuch a detriment Campany and as may be very mischievous; and therefore by the Party, and Common Law of England, if J.S. shall maliciously fet the fo other Commark of J. D. upon his Goods, to the intent J. D. shall panies. or may be brought into any trouble, or put to any 2 Cro. ol. 471. damage or charge, an action of the case will he against J.S.

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CHAP. VII.

Of Factors.

1. Factors, their qualifications generally considered, as in reference to their employment.

II, of Commissions, and the words in the same, that qualifies them VII. Of Goods remitted to Fain their employment.

III. Of Commissions to Factors that limit their actions.

IV. Of a Factor that deals for Several Merchants, of the obligations that oblige and not oblige each other.

V. Of their power, considered as in reference to the dispensing IX. Of Freighting of Ships by a with the Debtors of their Prin-

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VI. Where the false entry, or un-X. Of the general rules to be used, faithfulness of the Factor, subjects bim to answer damage

to his Principal; and of the like committed by the Principal, where in answer to the Factor.

ctors, and lost in their possession, who bears the misfortune.

VIII. Bills of Exchange drawn on the Factor by the Principals, and accepted, but before day of payment the Principal becomes Banckrupt, whether the same must be payed.

Factor, where he is obliged to see the same discharged.

touching the construction of their

Factor is a Servant, created by a Merchants Letters, and taketh a kind of provision called Fa-Rorage; fuch Persons are bound to answer the loss, which happens by over-passing or exceeding their Commisfion: but a simple Servant or an Apprentice can only incur his Masters displeasure. The Spaniard hath a Proverb: Quien passa Commission, pierdido el Provision; He that exceeds his Commission shall lose his Factorage: But time and experience hath taught them to know better things. for now it is: Subolca la paga, His Purse must pay for The gain of Factorage is certain however the fuccess of the Voyage proves, and it is the prudence of Merchants to honest imploy and industruous Persons, for otherwise the Factor may grow rich, and the Merchant poor; the first being fure of his reward, the latter uncertain of his gain.

II. In Commissions they now generally insert these Ddd 4

words, Dispose, do, and deal therein as if it were your own; by which the actions of the Factor are to be excufed, though it turns to his Principals lofs, because it Thall be prefumed he did it for the best, and according to his discretion.

III. But bare Commission to a Factor, to sell and dispose, will not enable him to trust or give further day of payment; for in the due execution of his authority he ought on a Sale to receive quid pro quo, and as he delivers one receive the other; for otherwise by that means, as they may trust fix Moneths, they may trust fixteen years. Nor by the vertue of that clause, of Doing as if it were their own, may they trust out to an unreasonable time, as ten or twenty years instead of one, two,

7 Fac. B. R. ton & Saddacks. Bolftr. I. P. 103.

Rot. 416. Ear-three Moneths, which is the Customary time for the like Commodities: And so it was adjudged where one had remitted Jewels to his Factor in Barbary, who disposed of the same to Mulle shack the Emperor for a Sum certain to be paid at a time, which being elapsed, the Factor not obtaining it was forced to make the fame good to his Principal.

IV. Again, one and the fame Factor may act for feveral Merchants, who must run the joynt risque of his actions, though they are meer Strangers to one another; as if five Merchants shall remit to one Factor five distinct Bales of Goods, and the Factor makes one foynt Sale of them to one man, who is to pay one moyety down, and the other at fix Moneths end; if the Vendee breaks before the fecond payment, each man must bear an equal share of the loss, and be contented to accept of their dividend of the Money advanced.

But if fuch a Factor draws a Bill of Exchange upon all those five Merchants, and one of them accepts the fame, the others shall not be obliged to make good the

Mich. 17 Fac. C. B. V an payment.

Heath versus 24, 25.

V. And as the Authority and Trust reposed in Fa-Turner, Win b ctors is very great, so ought they to be provident in their actions for the benefit of their Principals; and therefore if Factors shall give time to a Man for payment of moneys contracted on Sale of their Principals Goods, and after the time is elapfed they shall sell Goods

Goods of their own to fuch Persons for ready Cash (leaving their Principals unreceived) and then such Men break, and become insolvent, the Factor in equity and honesty ought to make good the losses, for they ought not to dispense with the non-payment of their Principals Moneys after they become due, and procure payment of their own to an other mans loss. But by the Laws of England they cannot be compelled.

VI. Yet if Goods are remitted to a Factor, and upon arrival he shall make a salse Entry at the Custom-house, or land them without the Customer, whereby Kirke Trin. 7 they shall incur a seisure or forseiture; whatsoever the Jac. in B. R. Principal is endamaged he must inevitably make good, Lane Report of a Factor makes his Entry according to the Envoice, or his Letter of Advice, and it sals out the same are mistaken, if the Goods shall be lost, yet the Factor is

discharged.

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And as fidelity, diligence, and honesty are expeeted from the Factor; fo the Law requires the like from the Principal, judging the Act of one to be the act of the other: and therefore if a Merchant shall remit Counterfeit Jewels to his Factor, who fells and difpofes them for valuable confiderations, as if they were right; if the Factor receives any loss or prejudice thereby, by imprisonment or other punishment, the Master shall not only make good the damage to the Factor, but also render satisfaction to the Party damnified. And so it was adjudged, where one How was possessed of three Counterfeit Jewels, and having Factors in Barbary, and knowing one Southern a Merchant was resident on the Place, configns those Jewels to his Factor, who receiving them intreated Southern to fell those Tewels for him, telling him they were good Jewels; whereupon Southern, not knowing they were counterfeit, fold them Hill. 25 Fac.

to the King of Barbary for eight hundred Pounds (they B. R. Cro. 2. being worth really but one hundred Pounds) and deli-part. fol. 490. vered the Money to the Factor, who remitted the same 127. Fopham to How: the King of Barbary not long after finding 149. not rehimself couzened, committed Southern to Prison till he solved that repaid the eight hundred Pounds: Whereupon Southern Book.

coming

coming for England brought his action against How, and had Judgment to recover his damage; for the Principal shall answer for his Factor in all cases where he is privy to the act or wrong. And fo it is in Contracts, if a Factor shall buy Goods on the Account of the Principal (especially if he has used so to do) the Contract of the Hil.43. Eliz. Factor will oblige the Principal to a performance of

VII. When Factors have obtained a provenue or pro-

B. R. Petties & the bargain.

lofs.

Soames cafe Goldsbr. fol. 137.

Coke lib.4.

fit for their Principal, they must be careful how they dispose of the same, for without Commission or order they must be responsible. Goods remitted to Factors ought in honesty to be carefully preserved, for the trust is great that is reposed; and therefore a Factor robbed in an Account brought against him by his Principal, the same + southels case shall discharge him +. And so it is if a Factor buys Goods for his Principal, which afterwards happens to be damnified, the Principal must bear the misfortune: But if a Factor shall dispose of the Goods of his Principal, take Money that is false, he shall there make Good the loss; yet if he receives Moneys, and afterwards the fame is by Edict or Proclamation leffened in value, the

> Again, in Letters of Credit the Factor must be fure to fee whether the Commission is for a time certain, or to fuch a value, or not exceeding fuch a Sum, or general, in

> Merchant and not the Factor must there bear the

which he must have a careful eve.

VIII. A Merchant remits Goods to his Factor, and about a Moneth after draws a Bill on him; the Factor having Effects in his hands, accepts the Bill, then the Quare, If equi- Principal breaks, against whom a Commission of Banckty may not re-rupt is awarded, and the Goods in the Factors hands are feized; it has been conceived the Factor must answer the Bill notwithstanding, and come in a Creditor, for fo much as he was inforced by reason of his acceptance to pay.

> IX. If a Factor enters into a Charter Party with a Master for Freightment, the Contract obliges him; but if he lades aboard generally the Goods, the Principals and the lading are made liable, and not the Factor, for the The Freightment.

lieve in fuch çafe.

The Principal orders his Factor, that as foon as he hath loaded (he having Moneys in his hand) to make an Affurance on the Ship and Goods, if the Ship happens to mifcarry by the Custom of Merchants, he shall answer the same, if he hath neglected his Commission; so it is, if he having made an Affurance, and loss hath occurred, he ought not to make a Composition without orders from his

Principal.

Generally the actions of Factors do depend on Buying, Selling, Freighting, and all other the Heads that have been treated in the Second Book, by which their imployment is universal in matters Maritime, and of Commerce; and the questions which would arise touching the same, if treated on, would be in infinitum. However these are to be the Standard rules, which should govern their actions; viz., honesty, faithfulness, diligence, and observing of Commission, or Instructions, which being considered, and weighed by those that shall be Judge of their actions, a right understanding and determining of the matters arising between them and their Principals, would soon be ended.

But those fort of Factors that have wanted those things, seldom or never render any other account, but long, and tedious Chancery Suits; by which they not only have endamaged their very Trade, but seek to marry their Principal to a double affliction, by obliging them to sue either a Beggar, or that which is worse,

a naughty man.

On the other hand, Factors that behave themselves worthily and prudently in the service or their Principals, ought after their tedious service to be numbered amongst those that justly challenge that worthy denomination of Merchant: And such was he who never made breach of Commission, in the service of his Principal, but once; that was, when Wines were committed to him to dispose of, but the price (by reason of a glut) sell; advice being given to the Principal of the same, who immediately in passion writes to his Factor to take a hammer and knock out the heads; but the Factor considering (that leave must be given to loosers to speak) knew better things, and kept the

Df Factors.

Goods, and fold them for their full value; and when Accounts were to be made, instead of bringing to the Account of Wines their heads knock'd per order, worthily brought per contra, sold at their intrinsick value. Such faithful Ministers, I say, justly deserve that of our Saviour, Well done, &c. and to be no more called Factor but Merchant.

CHAP.

CHAP. VIII.

Of the Laws of Wature and Wations.

I. Of the variety and contrariety of bumane actions, and from whence they spring.

II. Of the difficulties that happen in the obstructing our inquisition in finding that which is lawful.

III. Humane Laws from whence they flow, and wherefore the Laws of Nature are above ours.

IV. No man naturally more a Fudge then another of Natures Laws.

V. Nature's Laws are instituted for inward goodness and virtue; but State Laws for quiet and retose.

VI. Of punishment required by Kings against those that violate the Laws of Nature or Nations, though the same touch not them nor their Subjests; and of punishing an equal.

VII. Of punishing an equal where that right fails, and the reasons of the same.

VIII. Of Kingdoms equal in Power cannot be commanded, but intreated, may be to execute the Fudgment of another by the

I aw of Nations.

I X. That such power of executing the Fudoments or Decrees

the Judgments or Decrees of any Forein Nation, extends not to those of Life or Honour.

X. Of executing the Fudgments given in a Kingdom absolute, in another that is annexed by Conquest; and of the difference of that, and one by union.

XI. Where that right fails in Plantations, and the reasons of the same.

I. Plain Reason shews us, that Natural and Mathematical causes have more certitude then Civil; for Nature is always uniform and alike in its operations. Hence fire always burns, and never wets a stone; when the ayr naturally tends downwards, and never stays in the middle. In Mathematical causes ordinarily the forms, are such as have no middle interpoled, as betwixt even and

odd: There is no medium parti participationis, betwixt a * Inquid naturight line and a crooked; there is no middle fort of line; rale fit pessanthus two and two always make four.

bene secundam

But Civil or Humane actions, proceeding from a mu-naturams e hatable and various principle (the will*) cannot always bent, non in debe alike or unform. And besides the will within, hu-pravatis. Arist, mane actions without are subjected to different cir-Polit. 1.5. cumstances, and to infinite encounters; by reason of

which

Of the Laws of Mature.

which their excessive number, they cannot be foreseen while Men are making Laws: Hence we may understand, wherefore it is faid , Omnis definitio in jure est periculosa; and that summum Jus at some time may be found summa injuria; as to render a Man his Sword, when he is actually mad, &c. And as circumstance hath power to change the matter, fo in the form of the action it leaves in the middle a latitude, fometimes enclining to one extream, fometimes to another.

Non ideo id Deum velle fed justum effe, (that is due in Law) quia Deus voluit. Anaxarchus apud Plutarchum in Alexandro.

For Example, betwixt that which by precept we are commanded ever to do, and that which we are commanded quia justum est, never to do, is plac'd that which is lawful for us now and then to do, or not to do, in matters of our own right, fo far as they feem expedient, or not expedient for us: Thus Foseph is called a just Man, because he thought of divorcing himself from Mary, though upon circumstances he would not, &c. But that which perplexes us all here is, that this licitum leans fometimes more to the one hand, fometimes more to the other, fometimes more to that which is absolutely good, fometimes more to that which is absolotely bad; from whence grow scruples and doubtings, twhether in fuch wilight we really participate more of light then of darkness, that is, more of good then of bad.

Vafa. II. Controv. 54. 4.

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III. Humane Laws grow most out of these middle things, ex mediis licitis; and upon right examination we find, that a Man hath nothing else to dispose, for we (poor subordinate Vessels) cannot so much as deliberate de absolute debitis, and absolute illicitis, for they were in force before Grotius de Jure Man, Prince, or People were in being, and God himself Belli ac Pacis, cannot now alter them, they flowing intrinsically, either lib. 1. cap. 1. from his Sanctity, Wildom, and Justice, as he is a Creator and Governour; or elfe they flow from Nature, whose rule (according to Gods making it by that which is in himself) is right reason and honesty: This uprightness of Nature, together with that obligation we have to be fubject to it, was not a moment after us, and therefore we could not determine any thing about it; for which cause we have not a Legislative power to alter or diminish any of Natures Laws.

IV. Saint Paul tells us of those who without any after knowd

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knowledge of Gods revealed will or Laws to Man, were condemnable by those of Nature alone, in the punishing the Breakers thereof. No Man is naturally more a Magistrate then other; otherwise what meant Cain, when after his murther he cryed, whosever shall find me will slay me?

V. And though humane Laws remember us of those things, yet it is not as if they gave their original and primary force of obliging; yea, reason of State is not busied so much about inward piety and virtue, as it is about publick quiet and repose, or those actions which regard another mans receiving right or wrong. And hence it is that great prodagility is not so severely punished as little robbery, and that malus homo potest essential the reason is, because though he may do himself wrong in his own rights, yet he may alwayes do other men right in theirs: neither is there any clear reason, wherefore those lesser since and impieties should be punished by any but God, who is wisest to know them, justest to weigh the merit of them, and powerfullest to punish them.

This is the State of Gods and of Nature's Laws, to which we are all equally obliged, but our floting and circumstantiated Laws are only to give a rule for an equal and mutual community in things, which God and Nature gave us to dispose of as we would our selves.

VI. Hence it is that Kings, and fuch as have equal power with Kings, have a right to require punishment, not only for injuries committed against themselves or their Subjects, but for them also that do not peculiarly touch themselves, whatsoever the Persons that do unmanly violate the Law of Nature or of Nations: for the liberty by punishments to provide for humane Society (as hath been Grosius de Jure already mentioned) was in the hand of every man; but Belli ac Pacis, after Common-wealths and Courts of Justice were or-liberareast campaigness, not properly as they are over others, but as they are under none. For subjection to others hath taken away that right; yea so much more honest is it to vindicate other mens injuries then our own, by how much more it is to be feared, that a man in his own by too deep

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a refentment may either exceed a measure, or at least infeet his mind; however, his right of punishing an equal remains still in those places where the People remain as in great Families, and not in Cities, or under fome Government; and therefore those that have now possessions of any Parts of the New World, or American Isles, till they have either voluntarily submitted to a Government. or put them and their discovery into the hands or protection of fome Prince that may exercise power, there remains the old and natural right of punishing for offences. So likewife where Persons shall be affaulted by Pyrats on the Seas, if they be overcome, they may be immediatly executed by the Law of Nature; for otherwife there would be a Failure of power to punish such.

Vide chap. Py-Besides, the old natural Liberty remains in all Places racy § 11, 12. where are no Judgments; fo where they are taken and brought to a Port, and the Judge openly refuses the Trial of them; or that a Trial of them cannot be had without an apparent detriment and loss to the Captors, Juffice may be done upon them by the Law of Leg. extat D. Nature.

quod metus.

VII. Two Pyrats refolving to affault and rob the next Veffel they meet with (not knowing each others condition or defign) encounter, and the one happens to be overcome by the other; the question is now, whether the above mentioned right fo far remains, as that the stronger may execute him that he hath overcome? Non reddit fa- Right reason dictates, that the evil doer may be punished, ciendo quod de- not who should punish him; but that Nature sufficiently sheweth, that it is most convenient to be done by him that is Superior; yet doth it not demonstrate this to be necessary, except Superior be taken in that sense, that the evil doer be thought to have made himself thereby inferior to any other, and to have as it were degraded him from the order of men into the number of Beafts fubject to no man, and fuch are Pyrats, who have no other denomination but Night-wolves or Beafts of Prey. By Nature it is ordained, that the better command the worse; And Aristotle * faith, The worse are provided for the use of the better, as well in Naturals as in Artificials: It follows hence, that at least a guilty Person ought

bet, reddet patiendo quod debet. Philo. Peccare dum feltinatis, ad pænas ferendas festinatis.

* 7 Fol. 14.

bight not to be punished by another equally guilty, to which purpose is that faying of Christ, Whofoever of you is without fin (that is fuch fin) let bim throw the first frome. Pertinent is that faying, The Sentence can have no Authority, where he that judgeth is to be condemned; From whence it follows, that the right of punishing in such case at such time ceases.

VIII. Kingdoms which are equal in power, and having no dependance on each other, cannot be commanded nor corrected of another; but if there be a question, to execute the Decree or Judgment of one in the Territory of the other, there may issue forth a Commission of entreaty, under the Seal of that Court where the Judgement was given, or at least under the Great Seal of the Prince, directed to the Judges in that place where the Defendant is relident, and the Judge to whom the faid Commission is directed may award execution, according to the Laws of Nations : And fo it was adjudged, where one having recovered a Debt before the Governour of Freisland, Defendant upon that fled for England, the Governour at the Request of the Plaintiff, issued forth his Commission of Request, directed Omnes Magistrains infra Regnum Anglia rogans, to make execution of the faid & His. in Berli Judgment; upon which the Judge of the Admiralty in Rolls Abridg-ment, wiers England iffued forth an Execution of that Sentence, and case upon a the Defendant was taken, upon which he brought his Habeas corpus Habeas Corpus, and adjudged the Sentence well Executed fol. 530. by the Laws of Nations, and according to the Common Law of this Realm.

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So likewise if a Dutch-man takes up Goods at the Port of London, and gives a Note under his hand for the payment of the fame, and then flyes into Holland, the Vendor may apply himself to the Lord Major of London; and upon proof of the delivery, and Sale of the Goods, the Lor & Major making a Certificate of the fame, and fending . Inder the City Seal directed as above, they il, and do Execute the fame upon the of Hollan. Party.

Herein this last Case differs from the first; for by the former, if there should fall a question about the interpretation of the Judgment or Sentence, the same can-

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not be done, for they are not to examine the fame; and the reason is, lest the Stranger be induced at another time to do the like, and so dissolve the Judgments whereof they should demand the execution, the which would be done more through jealousie of the State, than for any injustice in them; besides the Judgements or Sentences, which are matters of Record, and of the greatest security in a Kingdom, the presumption that they were justly given shall alwayes be understood.

IX. But in the latter the fame may be examined, that is, the Merchant may be heard as to his legal defence, either to the lessening or discharging the debt or dammage, but against the testimony certified, no objection can be made, but the same is admitted as legally

proved.

But if there be a question of Honour or Life, there they may not execute the Judgments of Forraign Judges. especially if they have not known the merit of the causes, or feen the Informations, or heard the Witnesses; but more especially in England, for there can in no respect whatfoever the life of a Man, (let his offence be never fo hainous) be brought to punishment without a Legal Tryal, * and that by the producing of Witnesses viva voce to his face : yet Princes for the respect they bear each other, and for the Good of Justice, though they cannot at the bare request of the Judges of another Prince, put them to death; yet they may for exemplary punishments (which ought to be made upon the place where the fact was committed) yield the natural Subject to his natural Prince, unless the Prince to whom the Fugitive is fled finds that he is unjustly pursued, for in such cases he is not bound to yield them; yea, he is forbidden by the Law of God to restore a bound Man, which is fled into another Mans house, to avoid the fury of his Master.

X. And as the same is in cases Forraign, so likewise in those Estates that are under the Crown of England; and therefore if a Man. recovers against + J. S. in the Kings Bench in England, and then the Desendant styes over into Ireland, the Judgment may be certified over into the Chancery in Ireland, and they may by Mittimus send it into the Kings Bench there, and they may award Execution or others.

Wild

fol. 38.

Soto de Just. & Jure lib. 5.
qu. 1. Artic. 7.
Satius judicamus esse paucos
aliquos mala
ferre, quam immenjam multitudiam., Zonaras.
† Pasc. 24 Car.

2. in B. R. in Hibern. inter Warde and Moore.

Mr. C. 1. 21.

wife the party may bring his Action of Debton the fame; so the like has been done for Decrees given in the Chancery in England, which have been exemplified under the Great Seal, directed to the Kings Lieutenant, for the putting the fame in execution there; but in no case a Judgment given in England may be certified over under any other Seal, but that of the Great one.

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But in Scotland it is otherwise; for that is a King-dom Absolute, and not like Ireland, which is a Grown annexed by Conquest, but the other is by Union; and though they be United under one Prince ad sidem, yet their Laws are distinct, so as if they had never been United; and therefore the execution of the Judgments in each other, must be done upon Request, as above, and that according to the Laws of Nations.

XI. But Colonies or Plantations, which are reduced into the condition of great Families, have not this right of Requesting, for they are governed by the Laws prescribed by the Soveraign of the same, who may set Jurisdictions, and make them places priviledged not to have the Persons attached or arrested in any other places, but within their own bounds; fo likewife upon their first Forming or Institution, may so declare, that for any Debt or Contract made or done in any place but in that of the same Plantation, they shall not be impleaded; and therefore in Virginia at this day, if a Man contracts a Debt in England, and flies to the same, he cannot be there impleaded: But if a Man takes up Goods, and carries the fame over thither, there he may be fued in the place; fo likewise if it can be proved he carried over the money borrow'd, and this amongst others of the Laws and Constitutions of those Plantations, is preserved inviolably, the fame being as it were a pledge and general fafety, which is given to those Inhabitants that shall refort thither, and there plant themselves for the good of the Place; and although those that thither flie, by reason of great and unreparable loss, have contracted debts far beyond their ability to fatisfie, a failer of which, in strictness of Law, may (if the Creditor pleases,) oblige their Bodies to Imprisonment; yet doth it not thence follow,

that the same ought to be exacted; for though the Carcas of Men may gratifie the revenge of the Creditor, yet it never can pay the debt; wherefore if those ends by themselves in a moral estimation be not necessary; or if other ends on the opposite part occur, not less profitable or necessary; or, if the ends proposed by Imprisonment may be attained another way, it will then follow, that if there be nothing of obligation on the Debtors part, to render himself a Prisoner to the Creditor; that then if the same can or may be avoided by flight, the fame in conscience may be done; according to that of

† Ad Quintum Cicero, † It was not fit perhaps to dismis him being brought Tract. 1.21. to Judgment, but that he should be enquired after, and brought to judgment, was not necessary.

FINIS.

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A Short Table of the Principal Matters contained in this Book.

Diffinguished by Lib. for the Book, Chap. for the Chapter, and s. for the Paragraph.

Accessory.

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Prat in the attempt kills a perfon, by the Law Maritime the Slayer onely is Principal, and the rest onely Accessories: but by the common Law otherwise.

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